

Volume 6

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) NO. CR 16-00462 CRB
)
)
SUSHOVAN TAREQUE HUSSAIN,)
Defendant.)
)

San Francisco, California
Tuesday, March 6, 2018

TRANSCRIPT OF PROCEEDINGS

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9:00 a.m.

P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard out of presence of the jury:)

5 **THE COURT:** Let the record reflect all parties are
6 present. The jury is not present. It turns out that one of
7 the jurors, the one with the family issue with her son, did not
8 return because her son has pneumonia; however, the other juror
9 did return.10 So I'm prepared to proceed with using one of our
11 alternates. Any comment?12 **MR. REEVES:** That sounds fine, Your Honor.13 Did you get any further information about Ms. Botto and
14 her pregnancy and her --15 **THE COURT:** I mean, she's here. So I don't inquire if
16 they show up. It's when they don't show up that I actually try
17 to ask questions.18 **MR. REEVES:** All right. Well, we're ready.19 **THE COURT:** The only other thing was that she can
20 stand up or do whatever she wants to do.21 **MR. REEVES:** Okay. Thank you.22 **THE COURT:** So we bring in the jury?23 **THE CLERK:** Yes.

24 (Proceedings were heard in the presence of the jury:)

25 **THE COURT:** Let the record reflect that all jurors are

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1 present.

2 Thank you very much, ladies and gentlemen. Thank you so
3 much for being prompt.

4 And we are beginning or resuming, I think that's the right
5 word. We're resuming.

6 Mr. Keker, you may proceed.

7 And you are under oath.

8 JOHN BAIOCCO,

9 Called as a witness for the GOVERNMENT, having been previously
10 duly sworn, testified further as follows:

11 **CROSS-EXAMINATION (resumed)**

12 **BY MR. KEKER:**

13 Q. Thank you, Your Honor.

14 Good morning, ladies and gentlemen of the jury.

15 And good morning, Mr. Baiocco?

16 A. Good morning.

17 Q. Mr. Baiocco, at the end of the direct examination that you
18 had with the prosecutor, you were asked the question:

19 "Prior to December of 2011, did you do any EDD,

20 eDiscovery work for any customer?" And your answer was

21 "no."

22 Do you recall that testimony?

23 A. Yes.

24 Q. Immediately after signing the license agreement with
25 Autonomy, did you start trying to bring in eDiscovery

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1 customers?

2 A. I would say pretty soon thereafter, yes.

3 Q. Did you try to bring in a company, as an eDiscovery
4 customer, called Iovate?

5 A. I'm not sure about that.

6 Q. Would you look at 5506, please, sir.

7 A. Sure. What book?

8 Q. It's in the second binder.

9 A. 5506?

10 Q. 5506. Look at the bottom email from Mr. Leonard, that's
11 to -- copied to you and Mr. Williams.

12 A. Correct.

13 Q. And the subject is Iovate.

14 A. Yep.

15 Q. And the date --

16 THE COURT: Any objection?

17 MR. FRENTZEN: No objection --

18 THE COURT: Admitted.

19 MR. FRENTZEN: Sorry, Your Honor. If I could just --
20 there's -- I have no objection to the bottom portion. There's
21 portions of this that do not relate or did not appear to go to
22 this witness.

23 THE COURT: Okay.

24 MR. FRENTZEN: I may not have an objection. I just
25 haven't looked at the top part.

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1 **THE COURT:** Well, why don't you show the part that --

2 **MR. KEKER:** We'll start with the bottom, Your Honor.

3 **THE COURT:** Yeah, I mean, it will come in subject to a
4 motion to strike or redact.

5 **MR. FRENTZEN:** Thank you, Your Honor.

6 (Trial Exhibit 5506 received in evidence)

7 **BY MR. KEKER:**

8 **Q.** Friday, April 3, 2009, is three days after you signed this
9 eDiscovery agreement; right?

10 **A.** Yes.

11 **Q.** And Mr. Leonard is saying to Lepore with a copy to you,
12 "Thanks for quick call back T.J. Here is the breakdown of the
13 Iovate deal. It's a pending litigation. Capax Global has
14 signed an NDA." That stands for what?

15 **A.** Nondisclosure agreement.

16 **Q.** Right. And they have -- it's a Canadian lawsuit with U.S.
17 attorneys down at the bottom?

18 **A.** Right.

19 **Q.** Does that refresh your recollection that you were working
20 on that deal?

21 **A.** I mean, I'm not denying it. I don't remember it, but I'm
22 not denying it by any stretch.

23 **Q.** Look at 5469, please, sir. That's also in that second
24 binder.

25 **A.** 5469?

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1 Q. Five four six nine.

2 A. Okay.

3 Q. Is that a series of emails that you're copied on and --
4 yeah. You're copied on?

5 A. Yep.

6 **MR. KEKER:** I move it in.

7 **MR. FRENTZEN:** No objection.

8 **THE COURT:** Admitted.

9 (Trial Exhibit 5469 received in evidence)

10 **MR. KEKER:** Could we see the bottom of 5569?

11 Q. This is Leonard writing to Sass. Sass was at Autonomy;
12 right?

13 A. Correct.

14 Q. And it's copied to you and to Mr. Williams. And
15 Mr. Williams is the person that you hired to run your
16 eDiscovery business; right?

17 A. Yes.

18 Q. And the Iovate deal is a one-off pure services deal to do
19 search for litigation. It's eDiscovery; right?

20 A. Yes. Although it says "pure services," so I'm not quite
21 sure what that means in that email, but when they're talking
22 about terabytes, yes.

23 Q. And look at the one above that for Mr. Sass to
24 Mr. Leonard. He says, "Thanks. Spoke to Mike Sullivan."

25 A. Right.

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1 Q. "Spoke to Mike Sullivan. He is working with Steven on
2 this. Apparently a few moving parts," blah, blah, blah.

3 But this is a deal that Mike Sullivan was involved in,
4 too; right?

5 A. If Mr. Sass says so on there, yes.

6 Q. Okay. Well, look at 5317, please. That's in the first
7 volume.

8 **THE COURT:** 5569 in evidence.

9 **MR. KEKER:** I thought I moved it in, but if I
10 didn't...

11 **THE COURT:** Okay. I'm sure. I'm just --

12 **THE CLERK:** Is it 5469?

13 **MR. KEKER:** It was 5469, Your Honor.

14 **THE COURT:** Okay. So I just didn't have the right
15 number. Okay. What is it. It's 54 --

16 **MR. KEKER:** Five four six nine.

17 **THE COURT:** Thank you. Okay. So that's admitted.

18 **BY MR. KEKER:**

19 Q. And now we're looking at 5317.

20 Is that a -- are those emails between Mike Sullivan and
21 Steve Williams?

22 A. Am I in the right one? What is it? I'm seeing Stouffer
23 and me.

24 **MR. FRENTZEN:** I don't see it.

25 **MR. KEKER:** I'm looking at the wrong one.

BAIOCCO - CROSS / KEKER

1 5317. I'm sorry. I was looking at the wrong one.

2 Q. Okay. This is from Stouffer Egan to you dated April 6,
3 2009, one week after you signed the eDiscovery.

4 I move it in, Your Honor.

5 **THE COURT:** Admitted.

6 **MR. FRENTZEN:** No objection.

7 **THE COURT:** Admitted.

8 (Trial Exhibit 5317 received in evidence)

9 **BY MR. KEKER:**

10 Q. From Stouffer Egan, April 6, to you:

11 "John, Sushovan, Mike Sullivan and I identified 250K
12 of business we would like Capax to handle for us last
13 week. That would be the first job. Mike Sullivan should
14 be in touch tomorrow."

15 What business was that about?

16 A. I have no idea. That makes no sense whatsoever to me.

17 Q. Did you get the email?

18 A. Yeah.

19 Q. And finally, 5466. Finally on this subject, I should say.

20 A. Is that in the next book again?

21 Q. Yes.

22 A. 5466?

23 Q. Yes. Is that an email that you received from Mr. Sass
24 introducing you to Mike Sullivan?

25 A. Yes, it is.

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1 **THE COURT:** Admitted.

2 (Trial Exhibit 5466 received in evidence) .

3 **MR. KEKER:** All right. Could we put that up, the
4 bottom email first?

5 **Q.** Now it's April 7th.

6 "John/Mike --" so it's to you and Mike Sullivan who
7 the jury saw, the first witness -- "I wanted to make a
8 quick intro as Mike will be making a call to John to touch
9 base and cover some of the business opportunities coming
10 down the pike for Capax."

11 Can we see the one above?

12 This is about the -- this one is from Mike Sullivan
13 back to Sass. "He just called me. We're all set."

14 They're talking about the Iovate deal?

15 **A.** Correct.

16 **Q.** That was an eDiscovery deal?

17 **A.** Yes.

18 **Q.** You're talking to Mike Sullivan about an Iovate -- about
19 an eDiscovery deal within a week of signing that contract?

20 **A.** Yeah, absolutely.

21 **Q.** You told the jury that you didn't have any eDiscovery work
22 until December 2011?

23 **A.** No. I said we weren't capable of doing any eDiscovery
24 work until that point. This Autonomy was going to handle this
25 for us on their own, and it was going to be white labeled, so

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1 they were going to be behind the scenes on Capax. That's why
2 we were working with Mike. They said if we had customers
3 before we were ready, that they would do the eDiscovery, and we
4 could put it on our paper.

5 **Q.** The question that you were asked by the prosecutor is.

6 "Prior to December 2011, did you do any EDD,
7 eDiscovery work for any customer?"

8 And your answer was "no."

9 **A.** And I don't believe we did that work, but we certainly
10 didn't do it ourselves, and if it did happen, Autonomy did it
11 on their EDD platform.

12 Are you trying to say I was ready six days after I -- I
13 didn't even have the software at that point.

14 **Q.** Are you answering a question or are you just talking?

15 **A.** Well --

16 **MR. FRENTZEN:** I'm going to object to that.

17 **THE COURT:** He is responding to your -- wait a minute.
18 He is responding to your question. Okay.

19 **BY MR. KEKER:**

20 **Q.** You began training Capax employees in the Boston -- in the
21 Autonomy Boston eDiscovery facility, didn't you?

22 **A.** Yes.

23 **Q.** And you sent employees to Boston as early as April 7th?

24 **A.** No argument with that.

25 **Q.** And you sent more of them in June. And you sent more

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1 training in the fall. You kept sending these employees?

2 **A.** Yes.

3 **Q.** And then more in 2011.

4 **A.** Yes.

5 **Q.** And Capax was paid by Autonomy for training those
6 employees; right?

7 **A.** I don't -- what do you mean "paid?" They didn't pay us
8 for training our people.

9 **Q.** Are you sure?

10 **A.** No. But I -- what --

11 **Q.** Mr. Sullivan testified that Autonomy paid for the
12 training. You would disagree with that; is that right?

13 **MR. FRENTZEN:** I'm going to object that -- foundation,
14 argument, facts not in evidence.

15 **THE COURT:** This is cross-examination.

16 Go ahead.

17 Do you understand the question?

18 **THE WITNESS:** I guess I don't understand the question.
19 We did not invoice them for training our people or vice versa.

20 **BY MR. KEKER:**

21 **Q.** Right. Right.

22 **A.** Right.

23 **Q.** But you were being paid by them, weren't you?

24 **A.** How? You mean through the --

25 **Q.** With money.

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1 **A.** I understand, but I -- in direct correlation to that, I
2 don't --

3 **Q.** Look at 1624, please, sir.

4 **A.** Where's that?

5 **Q.** That's in the first binder.

6 **A.** Sorry.

7 **Q.** That's all right.

8 **A.** I've got three books up here.

9 **Q.** There's too many exhibits, no question.

10 **THE COURT:** Okay. Which one? What are we looking at?

11 **MR. KEKER:** 1624, Your Honor.

12 **THE COURT:** Okay. Sixteen --

13 **MR. KEKER:** One six -- one six.

14 **THE COURT:** One six two four, an email from Allen
15 Gurney?

16 **THE WITNESS:** I don't see that.

17 **THE COURT:** Well, wait, wait, wait, wait, wait. Let's
18 all make sure we're on the same --

19 **MR. KEKER:** I beg your pardon. This is in the
20 Government's binder.

21 **THE COURT:** Okay.

22 **MR. KEKER:** If I can -- could I walk up there and
23 share this with --

24 **THE COURT:** Well, we'll just put it up. I mean, it's
25 not in evidence yet. I don't mind you giving him the book

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1 unless you need it yourself, so...

2 **MR. KEKER:** One six two four is an email from --

3 **MR. FRENTZEN:** No objection.

4 **THE COURT:** Okay. Let it be --

5 **MR. KEKER:** Good.

6 **THE COURT:** I'm out. Everybody has a lot of energy
7 this morning. I'm trying to catch up to it, which may be an
8 impossible task.

9 Anyway, 1624 is admitted, and then the jury can see it.

10 (Trial Exhibit 1624 received in evidence).

11 **BY MR. KEKER:**

12 **Q.** The -- in 2000 -- in March of 2011, Mr. Gurney is writing
13 to Mr. Williams and copying you.

14 Who is Mr. Gurney?

15 **A.** He was an employee of Capax that was an eDiscovery subject
16 matter expert for us.

17 **Q.** And Williams is the head of eDiscovery?

18 **A.** Yes.

19 **Q.** And it's about staffing for UK data processing.

20 **A.** Yes.

21 **Q.** And it says, "Steve --" and I won't repeat it all, but:

22 "Steven, based on Fernando's comments below, my
23 expectation is that once we are up and running (steady
24 state post ramp-up), we'll need the following resource
25 types."

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1 This was referring to getting ready for the British
2 Petroleum eDiscovery work in the United Kingdom; right?

3 **A.** Yes.

4 **Q.** All right. And did you get ready and do things for that?

5 **A.** We did.

6 **Q.** Did Autonomy hire Capax -- we can take that down.

7 Did Autonomy hire Capax to do eDiscovery work for the
8 Federal Reserve Board?

9 **A.** No. That was a professional services engagement.

10 **Q.** Well, let's look at it. 5325.

11 You did work for the Federal Reserve Board; is that right?

12 **A.** Yes, we did.

13 **Q.** Capax did?

14 **A.** Yes. A lot of work.

15 **Q.** And it was Federal Reserve --

16 **A.** Five --

17 **Q.** -- had bought a lot of eDiscovery software from Autonomy,
18 hadn't they?

19 **A.** I believe that's what it was, yes.

20 **Q.** Look at 5325.

21 **THE COURT:** Any objection?

22 **MR. FRENTZEN:** Your Honor, I don't think this went to
23 the witness.

24 **THE COURT:** This is an email from Salazar to Kanter.

25 **MR. KEKER:** Yes, Your Honor.

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1 **THE COURT:** Okay. November 16th, 2009.

2 **MR. KEKER:** November 16, 2009.

3 **THE COURT:** Any objection?

4 **MR. FRENTZEN:** Your Honor, I'm sorry, this just didn't
5 go to the witness. I don't know if the witness knows what this
6 is.

7 **BY MR. KEKER:**

8 **Q.** Do you know what consult -- I'll lay a foundation,
9 Your Honor.

10 Do you know what consultant work orders are?

11 **A.** I do.

12 **Q.** And what are they?

13 **A.** They're -- they're a work order to perform services at an
14 hourly rate or a fixed price bid based on a deliverable.

15 **Q.** And were they called CTOs sometimes?

16 **A.** They were.

17 **Q.** All right. The CTO was something that would be issued by
18 Autonomy to Capax to get some work done?

19 **A.** Correct.

20 **Q.** All right. And were CTOs issued to Capax to get
21 eDiscovery work done?

22 **A.** I mean, they were issued to do professional services --
23 right? -- so they weren't our engagements when we got a CTO
24 from Autonomy. We would put people on the job. And I believe
25 this was billable by the hour, this particular thing, I'm

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1 not --

2 Q. But to do eDiscovery work --

3 A. I'm not sure of this particular -- I mean, yes, in some
4 cases to help them with eDiscovery and in some cases it was to
5 implement --

6 Q. And then Capax and Autonomy would keep these in their
7 files, because they'd be -- these work orders were basically
8 contracts between the two?

9 A. Yes.

10 Q. And both sides would keep them in their files?

11 A. Correct.

12 Q. In their regular course of business; right?

13 A. Yes.

14 **MR. KEKER:** I move this in as a business record,
15 Your Honor.

16 **MR. FRENTZEN:** Your Honor, it didn't come from Capax.

17 **THE COURT:** I'm going to admit it.

18 (Trial Exhibit 5325 received in evidence)

19 **MR. FRENTZEN:** That's fine.

20 **BY MR. KEKER:**

21 Q. Could we look at -- this is the CTO for the Federal
22 Reserve -- let's look at the first page, Jeff, the email.

23 It says, "Capax/Federal Reserve Board CTO attached for
24 your signature."

25 And let's turn over and see what it's about, the

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1 attachment. Under project description:

2 "Verity has been engaged to perform certain tasks by
3 the Federal Reserve Board having a place of business in
4 Washington, D.C."

5 And then in the next paragraph, engagement background:

6 "Customer recently licensed Autonomy's IDOL, Ungate
7 legal hold, ALH, Ungate investigator and ECA, Merido, EDRM
8 and Introspect software to automate eDiscovery processes
9 such as legal hold administration, collection and
10 preservation of data analysis, and review of data," and so
11 on.

12 You were being hired to help with this eDiscovery project
13 at the Federal Reserve; right?

14 **MR. FRENTZEN:** Objection. Vague as to eDiscovery
15 project. This is services, not eDiscovery work.

16 **BY MR. KEKER:**

17 **Q.** Is this -- what is eDiscovery?

18 **A.** Electronic data discovery.

19 **Q.** And does it -- have you testified already that it involves
20 a couple of things. It involves software, hardware -- three
21 things: Software, hardware, and people.

22 **A.** Yes.

23 **Q.** Right. And that's what -- and that's what the
24 eDiscovery -- between the software, the hardware and the
25 people, you get data stored, you get data indexed, you pull

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1 data out, you put legal holds on it, you evaluate the case.

2 That's eDiscovery; right?

3 A. Yes.

4 Q. And this is not eDiscovery?

5 A. I'm just -- it was eDiscovery. It wasn't our platform.

6 We were purely professional services. But, yes, that is
7 eDiscovery.

8 Q. Okay. Did -- did Mr. Williams sign most of these CTOs?

9 A. I'm guessing he did, yes.

10 Q. Let me just see if you remember some. I can show you.

11 But do you remember working on eDiscovery for McAfee?

12 A. I remember we did professional services for McAfee.

13 Absolutely.

14 Q. For eDiscovery work for McAfee?

15 A. Oh, I mean, pretty much all the work we did with Autonomy
16 was wrapped around that, yes.

17 Q. Okay. And do you remember working -- doing eDiscovery
18 work for McKesson, the big drug distributor?

19 **MR. FRENTZEN:** I'm going to object again, vague.

20 **THE WITNESS:** We did professional -- oh, sorry.

21 **BY MR. KEKER:**

22 Q. On eDiscovery?

23 A. Yes.

24 **THE COURT:** Okay. Wait. I think the objection goes
25 to the time period, when -- of what point.

1 **MR. KEKER:** Okay. Then look at 5379.

2 **Q.** That's in the first binder.

3 **A.** I got it.

4 **Q.** There's a lot of pages there. Would you go to page 18?

5 **A.** Okay.

6 **Q.** And my question is did you do eDiscovery work for
7 McKesson?

8 **A.** We did subcontract work for McKesson.

9 **Q.** But look over at page 30. Did Mr. Williams sign the CTO
10 dated January 27, 2010?

11 **A.** Yes, he did.

12 **Q.** And was that for eDiscovery work for McKesson?

13 **A.** It was for professional services for eDiscovery work for
14 McKesson, yes.

15 **Q.** Okay. And we can go back to McAfee.

16 If you go back to page 7 and 8 of that same exhibit, we'll
17 get the date on McAfee.

18 **THE COURT:** Before you do that, I'm trying to get a
19 clarification here, and maybe -- because maybe it will move
20 things along a bit.

21 You seem to be drawing a distinction between professional
22 services for electronic discovery and electronic discovery.

23 Is there some distinction in your mind between the two?

24 **THE WITNESS:** Well, in this instance, I think the
25 distinction is were we -- was our platform up and ready and

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1 were we working --

2 **THE COURT:** I'm sorry. You have to speak up.

3 **THE WITNESS:** Were we working on our platform, and the
4 answer was we were not. We were subcontracted to do the work
5 at a customer on Autonomy's own software; right. It wasn't the
6 Capax-owned software.

7 **THE COURT:** So that's the distinction -- the
8 distinction you draw, in response to many questions asked by
9 defense counsel today about *were you doing work on eDiscovery*,
10 the distinction in your mind was if you didn't have a platform
11 up and running, the answer would be no, but you did certain
12 things in connection with eDiscovery prior to the time that the
13 platform was, I don't know, built, constructed, whatever they
14 do. Is that your distinction?

15 **THE WITNESS:** Yes.

16 **THE COURT:** And I'm not trying to put words in your
17 mouth. I'm just trying to understand it so we don't go for
18 another hour or some period of time --

19 **THE WITNESS:** Yeah.

20 **THE COURT:** -- arguing or going back and forth as to
21 what is meant by whether you did eDiscovery or not, work. Is
22 that the distinction?

23 **THE WITNESS:** Yes, it is.

24 **THE COURT:** Okay. Then go ahead, Mr. Keker.

25 **MR. KEKER:** Let me run through a list.

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1 Q. Did you do eDiscovery work for Freddie Mac, the home
2 mortgage loan company?

A. In the same context as McAfee and FRB; correct.

4 Q. Did you do it for Pfizer, the big pharmaceutical company?

5 A. I think so.

6 || Q. Did you do it for Hawaii Pacific Health?

7 | A. Yes.

8 || Q. Did you do it for a Chiquita Banana?

9 | A. Yes.

10 Q. Did you do it for Lincoln Financial?

11 | A. Yes.

12 || Q. H&R Block?

13 || A. Yes.

14 | Q. Union Pacific?

15 | A. Yes.

16 || Q. Harris Ranch?

17 A. I don't remember, but --

18 Q. It's a great steakhouse down I-5.

19 Did you do it for Philip Morris?

20 A. Yes.

21 Q. Did you do it for Office Depot?

22 A. Yes.

23 Q. And by September of 2010, you were complaining about all
24 the uncompensated hours that you were doing working on Autonomy
25 projects and not getting paid; right?

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1 A. Yes, because the hours ran out, and we were working beyond
2 those hours; correct.

3 Q. Look at 5406, please, sir. This is an email that you
4 wrote to Stouffer Egan on September 21, 2010.

5 I would move it in, Your Honor.

6 **MR. FRENTZEN:** No objection.

7 **THE COURT:** Admitted.

8 (Trial Exhibit 5406 received in evidence).

9 **BY MR. KEKER:**

10 Q. And here's -- you're saying:

11 "Hey, Stouffer, here's that list I was referring to.
12 This is so conservative it's not funny. Have you thought
13 about how we can work some funds through to help us? Let
14 me know."

15 And then below from Steve Williams with a copy to you,
16 Mr. Williams says:

17 "In speaking with John, here is a list of approximate
18 ovrage on hours. These are very conservative."

19 And then we can go down. Show the rest of that page.

20 So overage -- so you got project, overage, primary reason,
21 comments. So Office Depot, the overage is 250 hours. SIG --
22 what's SIG?

23 A. I'm not sure.

24 Q. Okay. Let's go to the second page. Consumer Energy,
25 McAfee is there, 110 extra hours. McKesson is there, 200

1 hours.

2 Go down to the bottom.

3 Pfizer is there, 400 extra hours. Federal Reserve Board,
4 600 extra hours. The total is 2,000 hours that you were
5 complaining that you were not being compensated for and you
6 want some more money; right?

7 **A.** Correct.

8 **Q.** Okay. And then look at 55 -- 5407, the very next one.

9 And is this a series of emails that you wrote to various
10 people, including Andy Kanter?

11 **MR. FRENTZEN:** No objection.

12 **THE WITNESS:** Yes.

13 **THE COURT:** Admitted.

14 What number is it, Mr. Keker?

15 **MR. KEKER:** This is 5407, Your Honor.

16 **THE COURT:** Okay. Admitted.

17 (Trial Exhibit 5407 received in evidence)

18 **BY MR. KEKER:**

19 **Q.** Let's start at the bottom.

20 You wrote in November of 2010. This is more than a year
21 before you had your platform up and running; right?

22 **A.** Yeah.

23 **Q.** When did you have your platform up and running?

24 **A.** Sometime in 2011.

25 **Q.** And you were telling people in early 2011 that you had the

1 capability to do this work yourself, didn't you?

2 A. I think we were probably telling them before that, but,
3 yeah.

4 Q. You were telling people in 2010 that you had the
5 capability to do this work?

6 A. Yes.

7 Q. And it wasn't true?

8 A. Nope.

9 Q. Okay.

10 A. Selling ahead of capability, so -- we do it all the time.

11 Q. What do you do all the time? Tell people that you have a
12 capability that you don't have?

13 A. No. But it takes sometimes six months to a year to close
14 a deal like that, so we felt like we were close enough that we
15 could advertise and get a deal, and we always have the backup
16 of Autonomy doing the work for us if we weren't ready.

17 Q. In November of 2010, you wrote to Mr. Kanter:

18 "Stouffer and I discussed many times getting made
19 whole for all the unbillable hours we log on engagements.
20 Here's a quick snapshot of some. We just got rejected for
21 \$78,000 in payments," and so on.

22 Could we go down and look at that list? It's actually on
23 the next page.

24 A. Two pages.

25 Q. Oh, let's look at the paragraph before we get to the list.

BAIOCCO - CROSS / KEKER

1 This is the next page.

2 "All this is what makes us a great partner. We have
3 talked about cutting us a PO to get somewhat whole on
4 this."

5 And then can we go down and look at the list?

6 This is the -- it looks like the same or almost the same
7 list that we looked at before.

8 Could we see the next page? Ending with the Federal
9 Reserve Board, Pfizer, and now the total is 2,330 hours that
10 you say you're not getting paid for.

11 A. Yes.

12 Q. Shifting subjects, you testified about some European
13 projects and said you got paid for European projects, but you
14 didn't have any European projects; do you remember that?

15 A. Any European eDiscovery platform projects; correct. I
16 remember that.

17 Q. Well, you had -- you were working on European projects,
18 including British Petroleum, weren't you?

19 A. We never got British Petroleum.

20 Q. But you were putting things together for British
21 Petroleum. We've talked about that.

22 You were working providing implementation to the Financial
23 Services Authority in England; right?

24 MR. FRENTZEN: Objection. Vague as to time.
25

BAIOCCO - CROSS / KEKER

1 | BY MR. KEKER:

2 Q. The first quarter 2010. We went over this before.

A. Yeah. So you're right --

4 Q. I'm sorry.

5 A. You're correct on getting our platform ready and working
6 on that for British Petroleum. I'm not sure if we actually had
7 paid resources on Federal -- FSA, but if -- I'm not denying it.

8 Q. You did implementation work for FSA, and we went over it
9 before, didn't we?

10 **A.** I don't remember. But, I mean, I'm not denying that we
11 didn't do work on FSA, so... Subcontracted work, professional
12 services.

13 || Q. I'll come back to that.

14 You had that Peterborough National Health Service proposal
15 back in 2009 that we looked at before; right? That's 5508 in
16 evidence.

17 A. That was the last thing we looked at the last day, yes.

18 Q. Right. And, in fact, you were doing all the professional
19 services for Autonomy globally at this point, weren't you?

20 | A. Yes.

21 Q. Look at 5394. Let's just get that in the record.

22 MR. FRENTZEN: No objection.

24 (Trial Exhibit 5394 received in evidence)

BAIOCCO - CROSS / KEKER

1 **BY MR. KEKER:**

2 Q. Could we look at the PS? Well, this is from -- I should
3 say it's from you to Jerry Hawk, your partner who was the
4 person -- your partner at Capax.

5 A. Correct.

6 Q. Okay. And you're talking about the FSA deal in the
7 subject line, but the PS:

8 "They are current on everything we have out with them
9 and have, for all practical purposes, turned over all
10 professional services globally to us, not to mention
11 300,000 a month in support."

12 Now, the "all the professional services" includes all the
13 eDiscovery services globally; right?

14 **MR. FRENTZEN:** Objection. I'm sorry. Vague. Does he
15 mean -- does he mean professional services for eDiscovery work,
16 which they were not doing?

17 **THE COURT:** I don't know.

18 **BY MR. KEKER:**

19 Q. Do you know the question -- you got the question?

20 A. We were doing professional services globally for most all
21 of Autonomy's products, correct.

22 Q. And all their eDiscovery work?

23 A. Oh, I don't know about all their eDiscovery work, but we
24 were working globally on eDiscovery professional services;
25 correct.

1 Q. And you were --

2 **THE COURT:** Maybe I -- I'm sorry. I'm not following
3 this. So can I ask a question?

4 **MR. KEKER:** Of course.

5 **THE COURT:** Is there a distinction between doing work
6 on eDiscovery and professional services on eDiscovery?

7 **THE WITNESS:** Yes.

8 **THE COURT:** Is there some distinction?

9 Okay. Tell us about that.

10 **THE WITNESS:** Okay. So when we bought the software
11 for seven and a half million, that was for us to set up to do
12 our own eDiscovery work. This is not working on our platform.
13 This is working on an Autonomy platform that we were trying to
14 mirror and helping them run some projects. Some of it was
15 implementation work. I don't even know what all the work was,
16 but it wasn't us doing eDiscovery on the platform that we had
17 purchased.

18 **THE COURT:** So the distinction you draw in your mind,
19 or you're testifying to, is that if you are working essentially
20 on somebody else's platform, but rendering services in
21 connection with somebody else's platform, and the work that you
22 are doing on that -- or that platform is an eDiscovery
23 platform, you characterize that as professional services; is
24 that correct?

25 **THE WITNESS:** Yes.

BAIOCCO - CROSS / KEKER

1 **THE COURT:** Thank you.

2 **BY MR. KEKER:**

3 **Q.** 2559 is in evidence, so could we look at page -- and --
4 page 22. Page 22 of 2559.

5 **THE COURT:** Okay.

6 **MR. KEKER:** We are going to put it up on the screen
7 unless you want to look at it. If you want to look at it, hard
8 copy, you can.

9 **THE WITNESS:** No. This is good.

10 **BY MR. KEKER:**

11 **Q.** Okay. And this is an invoice in June of 2010 for
12 outsourced specialized EDD services, \$200 per gigabyte for
13 European projects.

14 Do you see that?

15 **A.** I do.

16 **Q.** Now, you told us before that there was -- well, let's look
17 again at page 28.

18 Outsourced specialist EDD services, \$200 per gigabyte for
19 European projects. That's \$150,000. The one before was
20 \$275,000?

21 **A.** Yes.

22 **Q.** Are these the hundred-thousand-dollar payments that you
23 were talking about in your direct testimony?

24 **A.** I don't think so, because I think they were marked 1 of 7,
25 2 of 7, however. These might be different.

BAIOCCO - CROSS / KEKER

1 Q. And so before you got any payments, \$100,000 payments for
2 European projects, you were getting payments in amounts
3 different than \$100,000 for European projects; right?

4 A. Yeah.

5 Q. Let me ask some questions about this FISMA project. I'm
6 not sure if it's FISMA or Federal Cloud.

7 You told us you first met Sushovan Hussain in April of
8 2011; right?

9 A. Not as -- yes. Met, met. Correct.

10 Q. In England?

11 A. Correct.

12 Q. And you were there, among other things, pitching a big
13 government award that your sister company, Autonomic, had won?

14 A. Autonomic, yes.

15 Q. Okay. And that was a \$2.5 billion award from the Federal
16 Government to do what?

17 A. Host FedRAMP Certified in a government cloud.

18 Q. So this was the Federal Cloud Project?

19 A. Correct.

20 Q. And Autonomic had a piece of the action. Everybody had
21 bid on this, and Autonomic had won?

22 A. Yes.

23 Q. They were an 8A company?

24 A. Yes, they were.

25 Q. What's an 8A company?

BAIOCCO - CROSS / KEKER

1 A. Small business, disadvantaged.

2 Q. And does that get some kind of preference?

3 What does it mean commercially to be an 8A company?

4 A. Oh, I think there is a set aside business that is
5 specifically for 8A-type businesses.

6 Q. Okay. This was a contract that MicroTech had bid on and
7 they lost, but Autonomic had gotten the piece?

8 A. Autonomic, yes.

9 Q. Autonomic. And the other thing you were in England for
10 was this tools demonstration, showing some tools that would be
11 useful to the British Petroleum project?

12 A. We were there to make sure that our datasets were similar
13 to the Autonomy datasets. We were running them through each
14 platform, yes.

15 Q. In March, just a few weeks before your visit, you had sent
16 teams of engineers to London to demonstrate these what were
17 called staging tools?

18 A. I'm not denying that we didn't, yeah. I don't know the
19 exact dates on it. But the 6th they were definitely there
20 working, on April 6th. I don't think before that they were in
21 the UK. Maybe Boston.

22 Q. What are these tools?

23 A. Now you're asking me a technical question. My
24 understanding was they were staging tools that sped up the
25 eDiscovery process, that made our system apparently function a

BAIOCCO - CROSS / KEKER

1 little better than the Autonomy system.

2 Q. And Microsoft, your other partner besides Autonomy, paid
3 Capax to develop these tools for them, for Microsoft?

4 A. No.

5 Q. Look at the first interview that you gave to the Morgan
6 Lewis lawyers, the Hewlett-Packard lawyers. And that's --

7 **THE COURT:** What document are we talking about?

8 **MR. KEKER:** This is Exhibit 560 --

9 **THE COURT:** I'm sorry. What is it?

10 **MR. KEKER:** 5604, Your Honor.

11 **THE COURT:** And what volume is it, 56 --

12 **MR. KEKER:** It's in a separate volume of all his -- if
13 I could approach the witness -- of all his prior --

14 **THE COURT:** Well, I think we had the same volume. I
15 just don't see that number.

16 **MR. KEKER:** I may have said it wrong. Five zero two
17 four, Your Honor.

18 **THE COURT:** Okay. There. That, I have.

19 Okay. And what page do you want him to look at?

20 **MR. KEKER:** Page 6.

21 **THE COURT:** Page 6. Look at it.

22 **BY MR. KEKER:**

23 Q. Take a look at page 6, and look at -- and look under Roman
24 Numeral VII, third paragraph down, the -- the last sentence.

25 A. The last sentence? The last sentence where? At the end

BAIOCCO - CROSS / KEKER

1 of VII?

2 Q. Excuse me.

3 MR. FRENTZEN: I'm sorry, Your Honor. I don't know if
4 we are refreshing, and it seems like there is two whole
5 paragraphs on this topic.

6 MR. KEKER: It's the first paragraph under Roman
7 Numeral VII.

8 THE COURT: The first paragraph?

9 MR. KEKER: Yeah.

10 THE COURT: Okay. Hold on.

11 MR. FRENTZEN: And is this to refresh?

12 MR. KEKER: Yes. I'm asking him to read the first
13 paragraph under Roman Numeral VII, particularly the last
14 sentence of that first paragraph right here.

15 MR. FRENTZEN: Is this to refresh something in
16 particular?

17 BY MR. KEKER:

18 Q. Okay. Have you read it?

19 A. Yes.

20 Q. Let me ask you again. Did Microsoft pay Capax to develop
21 these tools?

22 A. No. You're misunderstanding that paragraph completely.

23 Q. Tell me what Microsoft paid for with respect to these
24 tools?

25 A. Microsoft paid us on a regular basis to do development

BAIOCCO - CROSS / KEKER

1 work for their customers, but not these tools specifically.
2 They were not -- at that point they weren't even in the
3 eDiscovery business, so these tools were built for our
4 platform, for our use. We never built one ounce of eDiscovery
5 software for Microsoft, nor did they ever pay for it.

6 Q. All right. So you were sell -- these tools were going to
7 make connection to the Autonomy software easier, faster; right?

8 A. Yes.

9 Q. The idea was they were to increase the processing speed;
10 right?

11 A. Yes.

12 Q. And Capax's tools were better, faster, and got better
13 results than anything Autonomy had?

14 A. That's my understanding.

15 Q. All right. Would you look at Exhibit 5440?

16 A. Are we in a different book now?

17 **THE COURT:** Yes.

18 **THE WITNESS:** All right.

19 **BY MR. KEKER:**

20 Q. You can put that binder down. 5440 is in Volume 1.

21 A. Yep. I got it.

22 Q. Oh, I beg your pardon. That's not in front of you. It's
23 in a folder.

24 **THE COURT:** Is it Exhibit 5440?

25 **MR. KEKER:** Exhibit 5440, Your Honor, is a new

BAIOCCO - CROSS / KEKER

1 exhibit.

2 **THE COURT:** Okay. Will you hand it to the Government?

3 **BY MR. KEKER:**

4 **Q.** Is 5440 the proposal for selling these tools to Autonomy
5 that you made to Mr. Hussain on July 27, 2011?

6 **A.** Yes.

7 **MR. FRENTZEN:** No objection.

8 **THE COURT:** Admitted.

9 (Trial Exhibit 5440 received in evidence)

10 **BY MR. KEKER:**

11 **Q.** Okay. And then let me show you another -- actually, let
12 me give you all of these.

13 5402?

14 **THE COURT:** 5442?

15 **MR. KEKER:** No. 5402. Five four zero two.

16 **Q.** Is this an email that you got from Mr. Hussain on or about
17 July 28, 2011?

18 **A.** Yes.

19 **THE COURT:** Admitted.

20 (Trial Exhibit 5402 received in evidence)

21 **BY MR. KEKER:**

22 **Q.** And was Mr. Hussain asking you for these tools to help
23 with our processing for the BP Gulf of Mexico case?

24 **A.** Yes.

25 **Q.** And then could we -- let me show you one more, 2216.

BAIOCCO - CROSS / KEKER

1 **MR. FRENTZEN:** I think this is already in evidence.

2 **MR. KEKER:** If it's in evidence --

3 **THE CLERK:** Yes.

4 **MR. KEKER:** It is in evidence?

5 **THE CLERK:** Yes.

6 **MR. KEKER:** All right. Then we can put it up.

7 **MR. FRENTZEN:** We admitted this, Your Honor.

8 **BY MR. KEKER:**

9 **Q.** So is this the license agreement for the tools?

10 **A.** Yes.

11 **Q.** All right. And then the final exhibit I want to show
12 you --

13 **MR. FRENTZEN:** I think, for the record, that's 2216.

14 **MR. KEKER:** Two two one six. I agree.

15 **THE COURT:** Yeah. And that's already admitted.

16 **BY MR. KEKER:**

17 **Q.** And then finally in these folder ones, is this an email
18 from Mr. Hussain to you, copying Pete Menell re people in
19 Chicago, August 2011?

20 **A.** Yes.

21 **MR. KEKER:** I move it in.

22 **MR. FRENTZEN:** No objection.

23 **THE COURT:** That's 5400?

24 **MR. KEKER:** Five four zero zero, yes, sir.

25 (Trial Exhibit 5400 received in evidence)

BAIOCCO - CROSS / KEKER

1 **BY MR. KEKER:**

2 **Q.** Can we show the bottom email? Mr. Hussain says:

3 "John, I spoke to Pete" -- this is to you -- "I spoke
4 to Pete, and it's important that you try to get people to
5 Chicago today as he wants to start the process
6 immediately. Please can you expedite? It's important for
7 us."

8 What does that refer to, if you know?

9 **A.** The use of our platform, getting it ready, and the tools.

10 **Q.** Okay. You asked your Capax technical team whether or not
11 these staging tools were worth the \$6 million that Autonomy
12 paid for them, didn't you?

13 **A.** I did.

14 **Q.** And they told you that the Capax tools were better,
15 faster, got better results, and would -- could be worth 6
16 million because they decreased processing time if -- so if
17 Autonomy was processing enough data, the speed-up would be
18 worth it?

19 **MR. FRENTZEN:** Objection, hearsay --

20 **BY MR. KEKER:**

21 **Q.** That's what the tech team told you?

22 **MR. FRENTZEN:** -- foundation.

23 **THE COURT:** Well, I'll allow it.

24 **THE WITNESS:** Yes.

25

1 **BY MR. KEKER:**

2 **Q.** And for all you knew, the tools could be worth \$20
3 million?

4 **A.** Yes.

5 **MR. KEKER:** That's all I have. Thank you,
6 Mr. Baiocco.

7 **THE WITNESS:** Thanks.

8 **THE COURT:** Redirect.

9 **MR. FRENTZEN:** Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 **BY MR. FRENTZEN:**

12 **Q.** I just wanted to start with that last Exhibit, 5400, I
13 think, if you don't mind.

14 If we could just blow up the top part.

15 Do you see a date there, Mr. Baiocco?

16 **A.** August 17th.

17 **Q.** Of what year?

18 **A.** 2011. Sorry.

19 **Q.** And Mr. Hussain is saying what down here?

20 **A.** "Thanks, John. We have a deadline that we need to meet."

21 **Q.** Do you know what happened on August 18, 2011?

22 **A.** I do. That was the HP Autonomy announcement deal, yeah.

23 **Q.** And in terms of the proposal on this, the staging tools,
24 Mr. Keker asked you about an interview in February of 2013 with
25 some lawyers from HP.

BAIOCCO - REDIRECT / FRENZEN

At that time, did you express to them skepticism about what those staging tools were worth?

3 || MR. KEKER: Objection, Your Honor.

4 **MR. FRENTZEN:** 106, Your Honor, as well as prior
5 consistent statements under 801(d)(1)(B)(ii).

6 || THE COURT: Objection overruled.

7 THE WITNESS: I did.

8 BY MR. FRENZEN:

9 || Q. What did you express to them back in 2013?

10 A. That I didn't -- I was trying to decipher, were they
11 really worth this kind of money.

12 Q. And again, in terms of the 6 million that you were
13 offered, did you have to negotiate that with Mr. Hussain?

14 A. No.

15 Q. And in what way did that correlate to debts related to --
16 between Capax and Autonomy there in August of 2011?

17 A. Well, they never cleaned up the McAfee deal off our books,
18 so we essentially used that money to pay McAfee back.

19 Q. So the money on the staging tools, much of that went back
20 to Autonomy?

21 A. Yes.

22 **MR. FRENTZEN:** May I have just one moment, Your Honor?
23 I'm just going to make a little space here for myself.

MR. KEKER: Let me get these out of the way.

25 (Pause in proceedings.)

BAIOCCO - REDIRECT / FRENTZEN

1 BY MR. FRENTZEN:

2 Q. Mr. Baiocco, is there a difference between doing
3 eDiscovery work and providing support or professional services
4 around eDiscovery work?

5 A. There's a difference if you're comparing it to doing it on
6 your own platform, yes.

7 Q. And can you describe that for us, please, what the
8 distinction is?

9 A. Well, if we were using it like where we billed our own
10 customer, Global Colleague, we were using the software we
11 purchased to do eDiscovery on the software we owned, on
12 hardware we owned in our own data center.

13 In these professional services instances we were working
14 on subcontracted to Autonomy, enabling them to complete a
15 project that was being either worked on by on prem software
16 that the customer purchased that was at their location in their
17 data center or potentially maybe working on it on software that
18 was Autonomy software in Autonomy's data center.

19 Q. All right. And in terms of the purchase orders for
20 outsourced EDD that we took a look at when you were last here,
21 were those for providing support or financial services related
22 to EDD work, or were those for Capax taking clients from
23 Autonomy and doing EDD work for them? Does that question make
24 sense?

25 A. No. Can you say it again?

BAIOCCO - REDIRECT / FRENTZEN

1 **Q.** Sorry. Let's just go to the -- can we go to 2559, please,
2 Ms. Margen.

3 **A.** Which one?

4 **Q.** Sorry. I can actually bring you the document, but if you
5 can see it up here, that would be great.

6 Could we go to the second page, please, Ms. Margen. This
7 is the one that's -- give me one second. Let's find one that's
8 upright.

9 Let's go, for example, to page 16 of 2559, if we could,
10 please. And can you blow up the middle portion of that,
11 please, Ms. Margen?

12 All right. Now, Mr. Baiocco, you were asked a lot of
13 questions about did Capax get CTOs sort of related to
14 eDiscovery work. Do you recall that?

15 **A.** I do.

16 **Q.** What's listed here on this particular purchase order, is
17 that for providing support or professional services around
18 somebody else's eDiscovery work?

19 **A.** No.

20 **Q.** What is this supposed to be for?

21 **A.** It's written like they're paying us to run the data
22 through our own -- our own platform that we would have built.

23 **Q.** And so here, for example, this is EDD processing?

24 **A.** Correct.

25 **Q.** Was Capax ever doing -- sorry. Not ever. At this

1 particular time in -- sorry -- in 2010, March, was Capax doing
2 EDD processing?

3 **A.** No.

4 **Q.** Did Capax do EDD processing for Autonomy in connection
5 with this purchase order?

6 **A.** No.

7 **MR. FRENTZEN:** And can we blow up the bottom, please,
8 Ms. Margen, the sticker price? Sorry. Right here.

9 **Q.** So this purchase order, for example, for 1,425,000, does
10 this relate in any way to the documents that Mr. Keker showed
11 you and asked you about?

12 **A.** No.

13 **Q.** Is this false? I mean, is this purchase order for
14 something that you couldn't do and were not doing?

15 **A.** Yes, it is.

16 **Q.** And did you do any of the work indicated here?

17 **A.** No.

18 **Q.** Now, in your sort of chasing of Autonomy for the money
19 they owed you, were you keeping track of money that Autonomy
20 owed to Capax?

21 **A.** Yes.

22 **Q.** Mr. Keker showed you a number of emails related to trying
23 to catch up on money owed to Capax by Autonomy. Do you recall
24 that?

25 **A.** Yes.

1 Q. All right. And I believe the emails were -- the Court's
2 indulgence one moment.

3 I think Defense 5407.

4 May I have a moment?

5 Do you recall Defense 5407? I can show it to you if you
6 need.

7 A. Can you just refresh me? A lot of numbers.

8 Q. The chart from Steve Williams about what was owed to Capax
9 by Autonomy that Mr. Keker just showed you.

10 A. All the overage for the hours, that was different. That's
11 what we worked for free, in my opinion, what he showed me.

12 Yes.

13 Q. And were any of those debts related to the payments here
14 in Government's 2559? In other words, the purchase orders from
15 Autonomy for EDD -- for outsourced specialized EDD services or
16 for EDD processing or anything like that?

17 A. No. I'm not sure we got paid for those hours. That was
18 just me showing them how much free work we were doing.

19 Q. What kind of work?

20 A. Profession -- those are all professional services hours
21 where we had one of our consultants at a customer working, and
22 they ran out of money to pay on it, and we continued to work
23 for free at our own expense.

24 Q. So was any of the stuff that Mr. Keker showed you in those
25 charts, was any of that for eDiscovery work being done by

BAIOCCO - REDIRECT / FRENTZEN

1 Capax?

2 A. No.

3 Q. And, in fact, did you work out sort of an arrangement with
4 Autonomy to pay for these overages?

5 A. I don't remember, because, I mean, we were always trying
6 to work them out, yeah.

7 Q. Okay. I'd like to show you a new exhibit.

8 Your Honor, if I could just have one second. Here we go.

9 Counsel, I'm on Government's Exhibit 513.

10 Take a quick look through Government's 513 and see if you
11 recognize what that is, sir.

12 A. (Witness reviews document.)

13 This is -- these are the support payments.

14 THE COURT: Admitted.

15 (Trial Exhibit 513 received in evidence)

16 MR. FRENTZEN: Thank you, Your Honor.

17 Q. What do you mean by "support payments"?

18 A. At that point we had taken over support for EAS for
19 certain. I'm not sure if we had NearPoint at this point, but
20 that's when they had two, three thousand customers, and instead
21 of when they called, they would get Capax to pick up their
22 technical support questions, and we would fix the issues.

23 Q. All right. And just for example, on the first page
24 here --

25 And Ms. Margen, could we get the middle section of this?

BAIOCCO - REDIRECT / FRENTZEN

1 All right. Is this for -- in contrast to the EDD purchase
2 orders from Autonomy, does this purchase relate to real work
3 done by Capax for real clients?

4 **A.** Yes.

5 **Q.** And, for example, does this, in terms of the cost, kind of
6 go down to the penny?

7 **A.** Yes.

8 **Q.** Does it list -- what are direct current clients and
9 indirect clients?

10 **A.** I believe direct clients were customers that Autonomy had
11 actually sold the software to. Indirect was where they were --
12 the customer was sold by a reseller. So if there was a hundred
13 thousand dollars a year support, the reseller would, under
14 their agreement, probably collect 30 percent. So then we
15 would -- we would be getting our portion of the 70,000 left
16 over versus if Autonomy was direct, we would be getting our
17 portion of the complete \$100,000 a year contract.

18 **Q.** Okay. And these were for real clients?

19 **A.** Yes.

20 **MR. FRENTZEN:** Could we go to page 3 of this, please,
21 Ms. Margen? Can we scroll down a little bit? Thank you.

22 **Q.** All right. Mr. Baiocco, this is another purchase order
23 from Autonomy on page 3.

24 Can you tell us, here again on items line 1 and 2, is this
25 for -- what's this for?

BAIOCCO - REDIRECT / FRENTZEN

1 A. The same as we spoke about a minute ago, direct and
2 indirect support.

3 Q. What was item 3?

4 A. That was for supplemental EAS support. That was kind of a
5 catchall.

6 Q. What do you mean by that?

7 A. A way to get us whole for hours, for whatever was going on
8 that we might have been a shortfall on.

9 Q. So is this something that was actually worked out between
10 Autonomy and Capax related to overages, if you will?

11 A. I don't know if it was directly to overages, but, yeah, it
12 was on a lot of different topics. But, yes, worked out between
13 us and Autonomy.

14 Q. And I guess what I'm getting at is the emails we saw about
15 overages, did that have any relationship to Government's 2559,
16 the purchase orders and invoices for EDD?

17 A. No, they did -- no.

18 Q. I want to go back to 2559 again briefly.

19 Could we get page 23 up, please? And could we blow up --
20 let's start with the -- on the top part, the date requested.
21 I'm sorry. That's not the top. It's sort of the -- great.

22 And the date here, is that UK date?

23 A. June 25th, yes.

24 Q. June 25th of 2010. And just scroll down to see what this
25 is a purchase order for here in the middle. Thank you.

BAIOCCO - REDIRECT / FRENTZEN

1 Mr. Baiocco, what is this particular purchase request for?

2 **A.** Outsourced EDD services for European projects.

3 **MR. FRENTZEN:** Can we go down to the bottom, please?

4 **Q.** And, Mr. Baiocco, can you make out here -- do you see a
5 couple of signatures under "authorized by"?

6 **A.** I do.

7 **Q.** And could you go down to the box at the bottom. And if
8 you can, can you see first signatures and second signatures?

9 **A.** Yes.

10 **Q.** Can you make that out? I'm not going to ask you to read
11 all those names, but do you see a line that says, "second
12 signature above 500 pounds"?

13 **A.** I do.

14 **Q.** And what names do you see there?

15 **A.** Sushovan Hussain, Andy Kanter.

16 **Q.** And do you see another one or some initials there?

17 **A.** MRL.

18 **Q.** Do you know who that is?

19 **A.** I'm guessing Mike Lynch.

20 **MR. FRENTZEN:** Could we go now to page 43, please.

21 I'm sorry. Let's skip over that. Let's go to page 45, please.

22 **Q.** Is this another of these purchase orders?

23 **A.** Yes.

24 **Q.** And down below -- if we could just scroll down a little
25 bit -- what type of activity is this for?

BAIOCCO - REDIRECT / FRENTZEN

1 A. EDD processing.

2 Q. Is that something that Capax could do at that time?

3 A. I'm sorry. What's the date?

4 Q. This would be December of 2010.

5 A. No.

6 Q. And was that something that Capax did for Autonomy at that

7 point in time?

8 A. No.

9 Q. I just want to point out, do you see in the top right-hand

10 corner where it says, "RQ number"?

11 A. Yes.

12 Q. Do you see two initials there?

13 A. I do.

14 Q. What are they?

15 A. AK and SH.

16 Q. Do you know anybody at Autonomy with those initials?

17 A. Yes.

18 Q. Who?

19 A. Andrew Kanter and Sushovan Hussain.

20 **MR. FRENTZEN:** Can we see page 51? Thank you. Great.

21 Q. Is this another purchase order for EDD processing and

22 additional EDD processing?

23 A. Yes, it is.

24 Q. June of 2011?

25 A. Yes.

BAIOCCO - REDIRECT / FRENTZEN

1 Q. Is that something that Capax did for Autonomy?

2 A. No.

3 Q. What initials are there on the RQ number?

4 A. The same as before, AK and SH.

5 **MR. FRENTZEN:** Page 55, please.

6 Q. Same idea in July of 2011?

7 A. Yes.

8 Q. Same initials?

9 A. Correct.

10 **MR. FRENTZEN:** Could we get page 60, please, of 2559?

11 Q. EDD processing?

12 A. Yes.

13 Q. Is that false?

14 A. Yes.

15 Q. And what initials?

16 A. Same. AK/SH.

17 Q. Now, I think we established this, but in your relationship
18 with Autonomy, were you keeping track of how much you had paid
19 to Autonomy for these licensing fees and how much you were
20 getting back from them through these false purchase orders and
21 false invoices?

22 A. Yes.

23 Q. Approximately how much did you -- did Capax owe Autonomy
24 for the three different license deals?

25 A. Just for the EDD processing?

BAIOCCO - REDIRECT / FRENTZEN

1 **Q.** Correct.

2 **A.** Around 15 million, all in.

3 **Q.** Okay.

4 **A.** With support and maintenance included in those.

5 **Q.** So the first deal was for 7 and a half million on its
6 face?

7 **A.** The software plus support maintenance; correct.

8 **Q.** How much was the second one, if you recall?

9 **A.** 4 million or 4.2.

10 **Q.** The third one that Mr. Hussain asked you to do in --
11 well --

12 **A.** 1.68.

13 **Q.** I'd like to show you now what's been marked as
14 Government's 2523.

15 Do you recognize what Government's 2523 is, Mr. Baiocco?

16 **A.** Yeah. It looks like a document that Capax produced for
17 the Government to show them all the EDD processing invoices
18 collectively.

19 **MR. FRENTZEN:** I'd offer 2553 into evidence.

20 **THE COURT:** Admitted.

21 **MR. FRENTZEN:** Sorry. It's 2523.

22 (Trial Exhibit 2523 received in evidence)

23 **BY MR. FRENTZEN:**

24 **Q.** Okay. Can you just describe for us what is -- what's
25 depicted in 2523, Mr. Baiocco?

1 A. Just all the -- all the purchase order or invoices that
2 we've been going through that were listed as EDD processing.

3 Q. So is this a collection of the false purchase orders and
4 the corresponding false invoices?

5 A. Yes.

6 **MR. FRENTZEN:** Could we go to the second page, please?

7 Q. Is there a total at the bottom there, Mr. Baiocco?

8 A. Yes.

9 Q. And what was the total of all the false purchase orders
10 and invoices?

11 A. 15,045,000.

12 Q. Did that make Capax whole on the licensing fees to
13 Autonomy based on those three contracts?

14 A. Yes.

15 Q. Was there a difference, Mr. Baiocco, in your mind between
16 the contracts between Capax and Autonomy related to providing
17 services and professional support and the licensing fee or EDD
18 contracts between Capax and Autonomy?

19 A. Yes.

20 Q. In what ways?

21 A. I mean, we were actually doing the support and the
22 professional services.

23 Q. Okay. And to your knowledge, the EDD licensing fees, as
24 those were set up, was that money owed by Capax to Autonomy?

25 A. Yes.

1 Q. Did those contracts cover any outsourced work -- Capax
2 doing outsourced work for Autonomy had Autonomy actually given
3 Capax customers to do EDD work for? Does that make sense?

4 A. I don't understand that one.

5 **MR. FRENTZEN:** If we could, let's pull up Government's
6 32, please.

7 Q. In other words, when Autonomy was sending you purchase
8 orders for you to invoice them for outsourced work that you
9 were not doing, was that actually governed by these licensing
10 agreements, or would that have required some additional
11 contracts to actually perform?

12 A. I'm not sure of the answer to that.

13 Q. Okay. Did any contracts exist to do work for any of these
14 outsourced clients which didn't exist?

15 A. No.

16 Q. And this contract, the licensing agreement, that was debts
17 from Capax to Autonomy?

18 A. Yes.

19 Q. Was Autonomy sending purchase orders for invoices from
20 Capax covered by this agreement or would that have required an
21 additional agreement, in other words, an additional contract?

22 A. So are you asking me if they would have got another -- an
23 outsourced customer they would have sent me something specific
24 to that customer?

25 Q. That's the question.

1 A. Yes. I mean, it didn't happen, so I can't answer it for
2 certain, but --

3 Q. It never happened?

4 A. Correct.

5 Q. So all of these purchase orders and invoices, were those
6 dedicated to any client?

7 A. No.

8 Q. Because no clients existed?

9 A. Right.

10 Q. You're in the eDiscovery business now. Are there issues,
11 requirements related to doing eDiscovery work for a client?

12 A. Yes.

13 Q. Is confidentiality, privacy, are those issues in doing
14 eDiscovery work?

15 A. Yes.

16 Q. What about data storage, and things like that are the
17 things that have to go into the contract?

18 A. Yes.

19 Q. Were there any contracts for any nonexisting clients that
20 Autonomy sent to you?

21 A. No.

22 MR. FRENTZEN: May I have one moment, Your Honor?

23 (Pause in proceedings.)

24 MR. FRENTZEN: That's all I have. Thank you,

25 Mr. Baiocco. Sorry for the pause.

BAIOCCO - RECROSS / KEKER

1 **THE WITNESS:** No problem.

2 **RECROSS-EXAMINATION**

3 **BY MR. KEKER:**

4 **Q.** A few questions, Mr. Baiocco. No binders.

5 During this period 2009 to 2000 -- through 2011, was Capax
6 referring to Autonomy orally and in writing in presentations,
7 and so on, as its partner?

8 **A.** Yes.

9 **Q.** And were you doing their EAS work all over the world?

10 **A.** Yes.

11 **Q.** And were you doing -- providing -- you said services,
12 services for their eDiscovery work all over the world?

13 **A.** Yes.

14 **Q.** And were you training people in their Boston office?

15 **A.** Yes.

16 **Q.** And did you have people in their Boston office working on
17 eDiscovery?

18 **A.** Training. I don't know if they were working on it, but,
19 yes.

20 **Q.** You -- you got Autonomy to -- your partner bought you
21 hardware in June of 2009 to help set up your platform?

22 **A.** Yes.

23 **Q.** Right. And you knew that they were looking for capacity
24 for overflow eDiscovery work, didn't you?

25 **A.** That's what they said, yes.

BAIOCCO - FURTHER REDIRECT / FRENTZEN

1 **Q.** All right. And then in -- you were telling people you
2 were capable of doing eDiscovery work, weren't you?

3 **A.** Yes.

4 **Q.** You told Global Colleague in February of 2010; right?

5 **MR. FRENTZEN:** Objection at this point. Scope.

6 **THE COURT:** Well, I'm going to allow it, because I
7 think it's moving ahead.

8 **MR. KEKER:** A couple more questions.

9 **Q.** You told people at Iovate that you were capable of it back
10 in 2009?

11 **A.** Yes.

12 **Q.** You told people at Peterborough, the health folks that you
13 were capable of it?

14 **A.** Yes.

15 **Q.** And then you showed up -- you got invited, and you showed
16 up with a tech team in England in March and April of 2011 --
17 2010 -- no, '11, I'm sorry, 2011, to do the British Petroleum
18 overflow work. That's what you were trying to get; right?

19 **A.** Yes.

20 **MR. KEKER:** That's all I have. Thank you, Your Honor.

21 **FURTHER REDIRECT EXAMINATION**

22 **BY MR. FRENTZEN:**

23 **Q.** Did Autonomy ever send you any work from BP?

24 **A.** No.

25 **Q.** In these questions Mr. Keker was asking you, in connection

1 with any of those, did Capax actually do eDiscovery processing
2 for any of those clients that you approached?

3 **A.** Global Colleague eventually at the end of 2011, but not
4 the ones prior to that. Not Iovate, not Peterborough.

5 **Q.** Prior to Hewlett-Packard acquiring Autonomy, were you able
6 to do any of the work for any -- did you end up doing any of
7 the work for any of these clients?

8 **A.** No.

9 **Q.** Did Autonomy send you any clients?

10 **A.** No.

11 **MR. FRENTZEN:** Thank you. Nothing further.

12 Thank you, Your Honor.

13 **THE COURT:** Anything further?

14 **MR. KEKER:** No, Your Honor.

15 **THE COURT:** Okay. You are excused.

16 **THE WITNESS:** Thank you very much.

17 **THE COURT:** So you may return to Boston.

18 On the other hand, if you would rather be here, you can
19 stay here as well.

20 Okay. Thank you. We're going to take our recess.

21 Ladies and gentlemen of the jury, we will be in recess
22 until 10:35.

23 Remember the admonition given to you: Don't discuss the
24 case, allow anyone to discuss it with you, form or express any
25 opinion.

PROCEEDINGS.

1 (Proceedings were heard out of presence of the jury:)

2 **MR. KEKER:** Your Honor, before we start the next
3 witness, we should talk to you about basically the fee issue,
4 the next witness with the fee issue.

5 **THE COURT:** Okay. Well, then let's do it now. The
6 next witness is who?

7 **MR. GRAY:** Cody Gray for defendant Sushovan Hussain.

8 **THE COURT:** Sorry?

9 **MR. GRAY:** I'm sorry, Judge. Cody Gray for the
10 defendant.

11 **THE COURT:** Right. Who is the next witness?

12 **MR. REEVES:** Marc Geall.

13 **THE COURT:** Okay. And the issue is, I assume with
14 Mr. Geall, that his attorneys' fees are being paid for by
15 Hewlett-Packard; is that the situation?

16 **MR. REEVES:** I'm not sure, Your Honor.

17 **THE COURT:** Okay. But the question is -- if they
18 were, could that -- well, defense believes that they are, but
19 the question is could the question be asked. That's the
20 question.

21 **MR. GRAY:** Yes, Your Honor.

22 **THE COURT:** Okay. And I have before me the memoranda
23 submitted by both parties. And as I understand, though it may
24 not apply to Mr. Geall, but I understand in the Government's
25 submission that they say that under the bylaws of

PROCEEDINGS.

1 Hewlett-Packard, they are under a duty to indemnify certain
2 individuals in connection with their legal expenses, in
3 connection with any government investigation.

4 Okay. But mr. Geall would not be included in that group;
5 is that correct? Because I looked at the bylaw -- I looked
6 at -- I looked at the email from Mr. Wong, which is attached to
7 the document.

8 **MR. REEVES:** The articulation of the position by the
9 Court is true I believe for the U.S. witnesses, and it's less
10 clear for the UK witnesses, but it may be true, and we're still
11 running that down, or HP is still running that down.

12 **THE COURT:** Mr. Geall is a UK witness; is that right?

13 **MR. REEVES:** I would say so, yes, Your Honor.

14 **THE COURT:** Okay. So we don't know whether his
15 expenses are indemnified or not under the bylaws of
16 Hewlett-Packard?

17 **MR. REEVES:** I don't know, Your Honor.

18 **THE COURT:** Here is my take on the situation. After
19 reviewing the memoranda, I think it's a -- I think it's
20 information that would be excluded under 403. I think that
21 while arguably it's probative, the probative value -- the
22 probative nature of it is as explained by the defense. It goes
23 to a potential bias of the witness.

24 On the other hand, it appears to me to be far outweighed
25 by all of the other issues that one has in a 403 determination.

PROCEEDINGS.

1 It seems to be a sideshow. It seems to be -- we'd have to go
2 and explain what is meant by it, by what the bylaws provide,
3 what is customarily done in the businesses, and it seems to be
4 certainly collateral to the issues. It seems to be a matter
5 that would consume a great deal of time, and I think it's --
6 its probative value is outweighed by those considerations.

7 So there you are. You are a little bit behind the curve
8 right here, as you can see, but I will hear you out.

9 **MR. GRAY:** All right. Thank you, Your Honor.

10 I'll just start where you left off. That's actually not
11 the conclusion that the Supreme Court reached in *Wood v.*
12 *Georgia*. In that case the Supreme Court made clear that it's
13 important for the jury to know, when assessing a witness'
14 credibility, that their fees are being paid by a third party,
15 and it's especially true when the third party is an employer
16 who may be motivated to advance their own interests as opposed
17 to the witness' --

18 **THE COURT:** That was a defendant, though, wasn't it?
19 It was the defendant?

20 **MR. GRAY:** It was the defendant in that case, but the
21 logic is no different than it would be here.

22 **THE COURT:** Oh, I think there is a great deal of
23 difference in the logic, because your logic actually would
24 assume that you could ask anybody in any case whether they're
25 remotely related to the case or the case focuses on them --

PROCEEDINGS.

1 that you would ask these questions: "Who is paying your
2 attorneys' fees?" And then you -- so I don't think it's
3 contrary to Supreme Court authority. I think the Supreme Court
4 authority is very, very different, because it relates to that
5 defendant being paid, his attorney in a criminal prosecution --
6 I think it was a criminal progresses, was it? I mean, maybe it
7 came up in habeas corpus, and so forth, but I think it was a
8 criminal prosecution.

9 Nevertheless, there is something key to a defendant being
10 represented in a criminal matter in which the attorney fees are
11 paid by somebody else. That's -- that's a key distinction. So
12 I think it's --

13 **MR. GRAY:** We would disagree, Your Honor. The point
14 is that your lawyer doesn't have only your interests at heart
15 necessarily. There is a potential that they may not, because
16 they're getting paid by somebody else. Whether or not that's a
17 criminal case or with respect to a witness, the logic of that
18 diluted interest is the same.

19 **THE COURT:** Okay. But you say -- when you say this is
20 contrary to the Supreme Court's decision, you are saying that
21 it's contrary to the logic of the Supreme Court's decision and
22 the logical extension of the Supreme Court's decision. It's
23 not the Supreme Court's decision, because it came out of the
24 context of a criminal defendant.

25 I think that's a meaningful distinction.

PROCEEDINGS.

1 **MR. GRAY:** Fair enough.

2 **THE COURT:** And I know you don't. And I also
3 appreciate the fact that you think logically it should be
4 extended. And I would say that there is some logic to your --
5 to your argument. But the question is the further attenuated
6 out and the further -- and the more complicated the
7 determinations are made as to the motivations, and so forth,
8 and what went into it, and so forth, that brings into play 403.
9 So I don't think I would use 403 at all, because I think it
10 would be wrong in determining the criminal defendant. I think
11 it's different with respect to witnesses, even though I
12 appreciate your argument. And I think it just proves too much.

13 So I'm going to exclude it. Thank you very much. Now
14 we're taking a recess.

15 **MR. REEVES:** Thank you, Your Honor.

16 **MR. GRAY:** Thank you, Your Honor.

17 (Recess taken at 10:24 a.m.)

18 (Proceedings resumed at 10:37 a.m.)

19 (Proceedings were heard in the presence of the jury:)

20 **THE COURT:** Let the record reflect all parties are
21 present.

22 Let me address the scheduling. We are going to meet on
23 the 16th, Friday the 16th, which was previously a dark day, but
24 we are going to utilize it for testimony.

25 On the Monday, the day that we just said one day at the

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beginning of the week, we will have a slightly different schedule. We will not take a lunch break, but we will adjourn sometime around 1 -- between 1:00 and 1:30 for the day. So, in other words, we will take our breaks during the day, but we won't take that long lunch break, because the Court has to attend a session over at the Ninth Circuit later on that day.

So it will be an abbreviated day. You may lose about an hour in the process.

Okay. You have called your next witness. Who is your next witness?

MR. LEACH: Thank you, Your Honor.

The United States calls Marc Geall.

THE COURT: Okay. Would you administer the oath to Mr. Geall?

THE CLERK: Please stand to be sworn. Please raise your right hand.

MARK ALEXANDER LOUIE GEALL,
called as a witness for the Government, having been duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated.

Please state your full name for the record and spell your last name.

THE WITNESS: Mark Alexander Louie Geall, G-E-A-L-L.

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DIRECT EXAMINATION

BY MR. LEACH:

Q. Good morning, Mr. Geall. Where do you live?

A. I live in London, in the UK.

Q. Where are you currently employed?

A. I'm employed by SAP.

Q. What is SAP?

A. SAP is a European software company.

Q. How long have you been employed with SAP?

A. Just over five years.

Q. So going back to approximately 2012, 2013?

A. Yes. 2012.

Q. Would you briefly describe your educational background, please.

A. I did normal exams in the UK. Did O levels and A levels, and then I went to university. Got a degree in engineering from Cambridge University.

Q. For those of us in the United States, what are A levels?

A. A levels are the sort of exams that you do in preparation for going to university. So you need to get specific grades to get into university.

Q. And you graduated from Cambridge in 1993?

A. That is correct.

Q. Did you go into the software business after that?

A. I did not, no.

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1 **Q.** Have you ever worked for a software company?

2 **A.** I have, yes.

3 **Q.** What company is that?

4 **A.** SAP and Autonomy.

5 **Q.** Okay. After graduating from Cambridge, what did you do
6 for a living?

7 **A.** Initially I worked for an engineering company called Rolls
8 Royce. They make aircraft engines.

9 **Q.** Then what did you do?

10 **A.** I then went into financial services, investment banking
11 working for an investment bank called Cazenove.

12 **Q.** What is Cazenove?

13 **A.** Cazenove is a UK investment bank that ultimately got
14 acquired by JPMorgan.

15 **Q.** And from 1998 to 2008, did you work as an analyst at
16 Cazenove and other investment banks?

17 **A.** I did, yes.

18 **Q.** Which investment banks?

19 **A.** Cazenove. I then went to Schroders, and Schroders was
20 acquired by Citigroup, and the bulk of the time I was at
21 Citigroup.

22 **Q.** What is an analyst?

23 **A.** An analyst is a financial professional. Their job is to
24 analyze financial markets, so in my case the software industry.
25 So to basically write written research, to build financial

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1 models, and basically to tell investors what stocks they should
2 or shouldn't buy.

3 Q. How do you go about doing that?

4 A. A number of ways, really. Firstly, relationships with the
5 management teams at the companies under coverage, and so I
6 generally followed between 10 and 12 different companies. I
7 would have relationships with each of those management teams,
8 the CEOs and the CFOs in particular. We would analyze
9 financial reports, so annual reports that every company has to
10 publish as a publicly listed business, quarterly reports. Also
11 spend time at sort of industry events, so trade shows and
12 industry events with companies that participated in that
13 particular industry, as well as talking to industry analysts,
14 so companies like Gartner and Forrester that basically take a
15 more technical view rather than the financial view of the
16 industry.

17 Q. You said a lot there, Mr. Geall. Let me make sure I
18 understand.

19 What is an annual report?

20 A. An annual report is an official publication that companies
21 in the UK have to produce, which basically runs through the
22 performance of the business over the prior 12 months, but may
23 also go into a discussion around the strategy and the focus
24 areas for that business.

25 Q. Are those important documents in your line of work?

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1 **A.** Very much so, yes.

2 **Q.** You also mentioned something called a quarterly report.

3 What is that?

4 **A.** So in the UK, companies can either report on a biannual
5 basis or on a half yearly basis or on a quarterly basis, and
6 the quarterly reports were again financial statements that were
7 basically produced to give information to financial analysts
8 and investors around the performance of a business at that
9 time.

10 **Q.** And you were a financial analyst. How does that differ
11 from the Gartners of the world that you mentioned in your prior
12 answer?

13 **A.** So financial analysts will tend to have, I suppose, two
14 core sets of skills or understanding. One is a financial
15 understanding, so good understanding of financial statements
16 such as profit and loss accounts, cash flow, balance sheets.
17 So understand, you know, the -- how a business is performing
18 based on its financial capabilities, as well as a good
19 understanding of an industry. So, you know, what are the
20 technical drivers, is this company well positioned, is it
21 likely to be successful in its -- in its execution.

22 **Q.** You talked a little bit about -- strike that.

23 What was the end result of your work as an analyst? How
24 does that -- you've studied a company, you've have read the
25 annual report, you've read the quarterly report. What do you

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1 do with that information?

2 **A.** I would say your activity breaks down into three different
3 areas. One is doing in-depth analysis and research, so really
4 taking a view on a particular company or an industry, and
5 making a recommendation on that.

6 You know, that could be two months work or two months
7 activity. So you'd spend about a third of your time maybe
8 coming up with this sort of more thematic or sort of
9 deeper-dive research. You would spend about a third of your
10 time responding to the financial results, so every quarter, if
11 you have ten stocks under coverage, that's ten days of your
12 time responding to those results, and then a third of your time
13 on the road meeting with investors, talking to analysts, and
14 talking to investors in particular to basically articulate your
15 view on a stock or an industry.

16 **Q.** Based on your work as an analyst, do investors rely on the
17 reports that the analysts publish?

18 **A.** Yes, they do.

19 **Q.** During this time period, 1999 to 2008, when you were an
20 analyst at Schroders and then Citigroup, what industry did you
21 focus on?

22 **A.** Software and IT services.

23 **Q.** What were some of the companies that you covered?

24 **A.** SAP, Autonomy, Dassault System, Business Objects, Atos,
25 Capgemini, Logica, CMG, and Tutronics, I think.

1 Q. Let me focus on the time period when you were covering
2 Autonomy.

3 How would you characterize your coverage of Autonomy
4 during the period that you covered them?

5 A. Between '99 and 2008? Generally quite positive. I was
6 generally a buyer of the stock, so I would have a positive
7 recommendation of the stock.

8 Q. Did you get to know Mike Lynch?

9 A. I did, yes.

10 Q. Did you get to know Sushovan Hussain?

11 A. I did, yes.

12 Q. How so?

13 A. As I mentioned, part of the role as an analyst is to build
14 a relationship with the management teams. Autonomy was no
15 different to any other company in my coverage.

16 Q. At some point in time, did you accept a job offer from
17 Autonomy?

18 A. I did, yes.

19 Q. How did that come about?

20 A. In 2008, I was looking at opportunities. I had had a bit
21 of a falling out with my head of research at Citigroup and had
22 another offer internally within Citigroup, which was more on
23 the investment banking side. I was having discussions with
24 Mike around that time, and he suggested that it was a good
25 opportunity for me to come to Autonomy and was that something I

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1 wanted to do.

2 Q. What were you hired to do?

3 A. So I was hired in a role which was to head one of the
4 businesses, a business called Virage.

5 Q. What was Virage?

6 A. So Virage was a -- at one time it was an acquisition that
7 Autonomy had made around early sort of 2000 -- I think it was
8 sort of 2003, maybe 2005 time frame, which had basically the
9 video processing capabilities of the IDOL platform.

10 Q. And when did you join Autonomy?

11 A. In 2008.

12 Q. What office did you work out of?

13 A. I spent most of my time out of the Piccadilly office in
14 London.

15 Q. Would you please describe the layout for us.

16 A. This was a, I suppose, a Victorian building in the center
17 of London. Autonomy had I think a couple of floors in this
18 building. One of those floors was -- had basically the board
19 room where sort of many of the management meetings were.

20 Next to that was Mike Lynch's office. Adjacent to that
21 was an office that Sushovan Hussain would use. Initially I was
22 in that office when I was in London, and then you went through
23 to other offices, including the marketing team and other areas.

24 Q. So for some period of time, you shared an office with
25 Sushovan Hussain?

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1 A. That is correct.

2 Q. Roughly how long was that for?

3 A. I would say certainly for the first sort of six to nine
4 months of my time at Autonomy.

5 Q. What was Mr. Hussain's role at the time you joined
6 Autonomy?

7 A. He was the CFO, or the financial director.

8 Q. And by virtue of being in the same office with
9 Mr. Hussain, did you have the opportunity to observe him on SMS
10 calls?

11 A. I did, yes.

12 Q. What is an SMS call?

13 A. It was a call that was run at different times during the
14 quarter to get information from the salespeople at Autonomy in
15 terms of how they were doing and did they need help closing or
16 executing deals.

17 Q. Describe for us how Mr. Hussain would run those SMS calls.

18 A. I mean, normally it was a conference call, a sales -- an
19 AE -- an account executive would dial in, and they would be
20 questioned on what deals he was working on and what deals he
21 was going to close in the quarter.

22 Q. At this time period, 2008, did Autonomy have a formal head
23 of sales?

24 A. I suppose technically it would have been Mike Mooney in
25 the U.S.

1 Q. Did you observe that someone else within Autonomy was the
2 de facto head of sales?

3 A. Well, I mean, Sushovan was quite involved in the sales
4 process, maybe more so than other CFOs I had come across at
5 different companies. You know, based on discussions we had
6 had, it was clear that he was in regular contact with Mike
7 Mooney to understand, you know, how the business was
8 performing.

9 Q. How did that differ from other companies you were
10 accustomed to covering?

11 A. I would say unusual. You know, there was -- I've one
12 other example of another company that had a similar setup, but
13 I would say generally unusual, because a CFO and head of sales
14 tend to have very different types of personality and very
15 different risk profiles.

16 Q. What do you mean by that?

17 A. The CFO is there to be prudent and to, you know, basically
18 challenge head of sales -- right? -- make sure that what's in
19 the pipeline really deserves to be in the pipeline, make sure
20 the numbers are what the numbers are; whereas head of sales
21 will tend to be, you know, typical alpha male, you know, who is
22 basically close to absolutely every deal under the sun, so he
23 just tends to be very, you know, optimistic and very aggressive
24 in terms of getting deals done. Not normally the type of sort
25 of characteristics you would associate with a CFO.

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1 **Q.** You were initially hired to be the CEO of Virage; is that
2 right?
3

4 **A.** Correct.
5

6 **Q.** And that was one of the companies that Autonomy had
7 acquired prior to you joining?
8

9 **A.** Correct.
10

11 **Q.** At some point in time did your job responsibilities
12 evolve?
13

14 **A.** They did, yes.
15

16 **Q.** How so?
17

18 **A.** So I'd say after about, well, six to nine months I
19 basically was asked by Mike Lynch to take a more active role in
20 investor relations.
21

22 **Q.** What is investor relations?
23

24 **A.** Investor relations is a function that most public
25 companies have. It's a -- normally a small team that are
responsible for working with the leadership team at the
business to, you know, come up with an investor strategy to
arrange meetings with investors, to communicate with investors,
to work on the documentation that was shared, whether it was
quarterly presentations, sometimes quarterly earnings, to
basically be the conduit between the business and the
investment community.
26

27 **Q.** Did Dr. Lynch offer you other responsibilities to entice
28 you into this investor relations role?
29

1 A. He did. I mean, I was not keen to do the role. I didn't
2 go to Autonomy to be head of investor relations, so he also
3 offered me the opportunity to be responsible for corporate
4 strategy and M&A, mergers and acquisitions.

5 Q. What is mergers and acquisitions, or M&A?

6 A. This is the role where, you know, for companies, you are
7 interacting with investment banks, you are keeping an eye on
8 the market and the market opportunity, looking at potential
9 acquisitions, potential divestitures that the business may
10 have, and then normally involved in the process of doing due
11 diligence and transacting on companies.

12 Q. You testified part of the responsibility of investor
13 relations was meeting with investors and quarterly earnings
14 reports. Did I hear that correctly?

15 A. Correct.

16 Q. What does that involve?

17 A. So most companies again in the UK -- it's not very
18 different to the U.S -- will invest -- will meet with investors
19 on a regular basis, probably quarterly after their results and
20 their earnings. Earnings are quite a significant time for any
21 business, because that's where new information comes into the
22 market. So invariably the company and the management team of
23 the company need to give indications to investors what is the
24 relevance of that information, what should we do with that
25 information, how does it impact the valuation or our desire to

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1 hold their shares.

2 Q. Are you familiar with the term "road show"?

3 A. I am, yes.

4 Q. What is a road show?

5 A. A road show is a series of meetings between the management
6 of a company and investors, normally in a particular region or
7 location.

8 Q. And during the time period 2009 through April of 2010, did
9 you participate in road shows on behalf of Autonomy?

10 A. Sorry. Can you repeat the dates?

11 Q. First quarter of 2009 through the first quarter of 2010?

12 A. Yes.

13 Q. Where were those road shows?

14 A. I can't remember specifically, but normally the agenda of
15 road shows that we undertook were predominantly in the UK and
16 Europe, so meeting with investors in London we would do every
17 quarter. We would also meet with some European investors, so
18 maybe a day in Paris or a day in Switzerland to meet with
19 investors there, and then occasionally we would also go to
20 North America, either to the East Coast, so normally Boston and
21 New York, or to the West Coast, to San Francisco to meet with
22 investors as well.

23 Q. Did Mr. Hussain ever join you for some of the road shows
24 in North America?

25 A. He did, yes.

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1 **Q.** Tell us about that.

2 **A.** So I think there was one road show that we were on; it
3 actually coordinated with a technology conference that one of
4 the investment banks was hosting and hosted every year, which
5 was in San Francisco.

6 So, you know, as part of -- as part of that, we met
7 with -- we met with investors together.

8 **Q.** And the investors that you are meeting with in the
9 United States in this time period, 2009 and the first quarter
10 of 2010, who were some of the investors you recall?

11 **A.** I mean, typically, we would meet with companies like
12 Fidelity Capital, potentially Putnam and others.

13 **Q.** Let me draw your attention, Mr. Geall, to the time period
14 of the first quarter of 2009.

15 Do you have that time period in mind?

16 **A.** Yep.

17 **Q.** Okay. During early 2009, were -- were there -- was there
18 an increase in some of the skeptics in the analyst community
19 that were covering Autonomy?

20 **MS. LITTLE:** Objection. Vague. Also leading.

21 **THE COURT:** Sustained. Foundation.

22 **BY MR. LEACH:**

23 **Q.** When Dr. Lynch hired you to become head of investor
24 relations, were there particular issues that he wanted you to
25 address with some of the analysts that were covering Autonomy?

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1 **A.** Yes.

2 **Q.** Describe those for us, please.

3 **A.** So at the time, there were a small number of institutions
4 that were I think quite cautious on the performance of the
5 stock. They basically felt that Autonomy was using its M&A --

6 **MS. LITTLE:** Objection. Hearsay.

7 **THE COURT:** Well, I think it goes -- well, let's see.

8 So is this being admitted -- why are you offering this?

9 It is hearsay, so the question is what are you offering it for?

10 **MR. LEACH:** I'm offering it to give a sense of his job
11 responsibilities, what he was doing as the IR director to put
12 in context some of the disclosures he's making to investors.

13 **THE COURT:** So, ladies and gentlemen, the witness was
14 asked how, I think in substance, how the Autonomy stock at this
15 particular period of time was viewed by investors.

16 And it is being admitted not for the truth of the matter.
17 That is to say, it's not being admitted to show that is what
18 investors thought about the stock; rather, it is being admitted
19 because it reflects or shows this witness' state of mind in
20 order -- in connection with the things that he did.

21 So that's a distinction that we draw all the time in
22 trials, and sometimes it's difficult to understand. But the
23 distinction is that this witness is going to say he was aware
24 of certain things by being told certain things or being --
25 witnessing certain things and, as a result, he did certain

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1 things. So it's not being introduced for the truth, that is,
2 whatever investors thought about the stock; rather, it's being
3 admitted for the purpose of explaining why and what this
4 witness did. So it goes to his state of mind.

5 **MS. LITTLE:** I would just add an additional objection
6 that his state of mind is not relevant.

7 **THE COURT:** Okay. Overruled. Go ahead.

8 **BY MR. LEACH:**

9 Q. What were the marching orders that Dr. Lynch gave you,
10 Mr. Geall?

11 A. Sorry?

12 Q. In terms of engaging with the analyst community in this
13 early 2009 time period, what did you understand your
14 responsibility to be in dealing with them?

15 A. I mean, I think, you know, every -- every company will
16 have, you know, bulls and bears, you know, companies that
17 are -- or investors that are positive or analysts that are
18 positive and negative, and the role of an investor relations
19 professional is to be able to communicate with those investors,
20 to articulate the equity story, you know, basically why you
21 should own this particular stock, why it's different to other
22 companies in that industry.

23 So, you know, part of my role and responsibility was to
24 interact both with positive analysts as well as negative
25 analysts and make sure that they understood, you know, why the

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1 business was performing in a particular way.

2 Q. You mentioned the term "bull." What is a bull in your
3 world?

4 A. A bull is somebody that is a buyer or positive on a
5 particular stock and would buy that in the market.

6 Q. And you mentioned the term "bear." What is that?

7 A. Somebody who is less positive, potentially negative and
8 would potentially be a seller of the stock in the market.

9 Q. Who were some of the bulls at this point in time in the
10 analyst community?

11 A. UBS would have been a positive on the stock. Citigroup
12 would have been positive on the stock.

13 Q. Who were some of the bears?

14 A. So Panmure Gordon would have been a bear on the stock.
15 Numis was a bear on the stock. Astaire or Astaire Securities
16 was a bear on the stock.

17 **MR. LEACH:** May I approach, Your Honor?

18 **THE COURT:** Uh-huh.

19 **BY MR. LEACH:**

20 Q. You mentioned some names there, Mr. Geall.

21 Numis, was there a particular analyst associated with
22 Numis?

23 A. David Thomas.

24 Q. And Astaire, what is that?

25 A. It's a small breaking firm in the UK focused on UK -- UK

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1 companies in particular.

2 Q. Who was the analyst associated with Astaire?

3 A. Paul Moreland.

4 Q. I've placed before you some documents, Mr. Geall.

5 Would you please look at what has been marked as Exhibit
6 55?

7 A. Okay.

8 Q. Is this a true and correct copy of an earnings release for
9 Autonomy for the quarter ended March 31, 2009?

10 A. I believe so yes.

11 **THE COURT:** Admitted.

12 **MS. LITTLE:** Objection, Your Honor --

13 **THE COURT:** Sorry?

14 **MS. LITTLE:** This one has a page missing. I
15 believe -- Exhibit 55, at least the version that I have, has
16 the last page missing.

17 **MR. LEACH:** Your Honor, I'm content to use 57.

18 **THE COURT:** Are 55 and 57 the same?

19 **MS. LITTLE:** My understanding is they are, Your Honor,
20 but one has a page missing.

21 **THE COURT:** Okay. So the Government wishes to
22 withdraw 55 and substitute 57?

23 **MR. LEACH:** That's fine with the Government,
24 Your Honor.

25 **THE COURT:** Okay. So 55 withdrawn. 57 admitted.

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1 || (Trial Exhibit 57 received in evidence)

2 | BY MR. LEACH:

3 Q. Are you familiar with this document, Mr. Geall?

4 || A. I am.

5 Q. Okay. Is this something you reviewed prior to when it was
6 issued to the public?

7 A. Potentially, yes.

8 Q. Let me draw your attention to the top portion where it
9 says, "Autonomy Corporation PLC announces results for the first
10 quarter ended March 31, 2009."

11 Do you see that?

12 || A. I do.

13 Q. Okay. And then below that, there is a bullet "record Q1
14 results ahead of consensus."

15 || What does "consensus" mean?

16 **A.** Consensus is a term that relates to basically the mean
17 earnings expectations that investors or financial analysts had
18 for that stock for that quarter.

19 Q. Okay. When you were covering Autonomy and other
20 companies, would you create some estimate of what you thought
21 earnings were going to be for any particular quarter?

22 | A. Yes.

23 Q. And how does that relate to the consensus estimate?

24 A. I mean, theoretically, it should be the same; right? If
25 you are looking at the same investors or the same financial

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1 analysts and they have the same earnings expectations,
2 consensus should come out the same.

3 **Q.** How does the consensus relate to the estimate for any one
4 particular analyst?

5 **A.** Well, I mean, consensus is the mean, it's the average of
6 all the analysts that cover the stock.

7 **Q.** And was this a metric that you paid attention to when you
8 were at Autonomy?

9 **A.** Yes.

10 **Q.** Why?

11 **A.** Consensus is an indication of the market expectation. If
12 you do better than the market, then the likelihood is the
13 shares will perform well. If you do worse than the
14 expectation, the likelihood is the shares will perform badly.

15 **Q.** And was this a number that Dr. Lynch paid attention to at
16 Autonomy?

17 **A.** Yes.

18 **Q.** Do you recall any experiences where you were criticized in
19 your role as investor relations for not managing the consensus
20 estimate well enough?

21 **A.** Yes.

22 **Q.** What happened?

23 **A.** One quarter where I was in the investor relations
24 function, I had been on all day, I believe, it was the end of
25 the quarter. Normally the process for consensus -- so

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1 consensus is collected or should be collected by third party
2 companies like Bloomberg or Thomson Reuters. So what tends to
3 happen is a financial analyst will publish their expectations
4 ahead of the company reporting those earnings. Invariably, we
5 would be in what was called closed season. So closed season
6 means that we should not be providing any new information to --
7 to the analysts that were writing these research notes.

8 So these analysts would publish, and that would happen
9 every quarter, and every time a new set of earnings
10 expectations came out, the consensus would move.

11 One particular quarter, an analyst had published --

12 **MS. LITTLE:** Objection. Can we have some foundation
13 as to the time of this event?

14 **THE COURT:** Sustained.

15 When did this happen? You said one particular quarter.
16 Are you referring to -- you are referring to a particular
17 quarter. Can you identify it?

18 **THE WITNESS:** I can't, no.

19 **BY MR. LEACH:**

20 Q. Is it at some point in time after early 2009 when you
21 assumed responsibility for investor relations?

22 A. It was sometime between 2009 and 2010.

23 Q. And do you recall a particular earnings consensus number
24 that this was associated with?

25 A. Yes. I can -- the number is vividly etched onto my brain.

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1 Q. What is that number?

2 A. It was two hundred million euros or two hundred million
3 dollars.

4 Q. And when you returned from your vacation, where were you
5 on vacation?

6 A. I was in Barbados.

7 Q. And when you returned from Barbados, did Mr. Hussain say
8 something to you?

9 A. So basically the analyst had published an update to
10 numbers which should move to consensus, which I think Dr. Lynch
11 was not happy about. So when I came into the office one
12 morning, Sushovan had mentioned that there had been a change
13 to -- to one analyst's reports, and as a consequence consensus,
14 and, you know, we might need to talk to Mike about it.

15 Q. Did you and Mr. Hussain talk to Mike about it?

16 A. We did, yes.

17 Q. Tell us what happened.

18 A. So, I mean, prior to the discussion with -- with Mike, I
19 had explained that, you know, as a investor relations
20 professional, you can't actually dictate what consensus is.
21 You can only provide information that helps an analyst come to
22 the right conclusion as to the performance of the stock. So,
23 you know, you can't give information in closed periods, so you
24 cannot effectively manipulate it. So it is what it is.

25 So, you know, there was really nothing I could have done.

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1 I was on holiday. We were in closed season, so we shouldn't
2 have been communicating with the analyst community anyway, so,
3 you know, it is what it is.

4 My hope was that I had Sushovan's backing in any
5 discussion that we have or would have with Mike consequently.

6 Later on that day, I was basically pulled in to the board
7 room with -- with Mike, Sushovan, and I believe Andy Kanter,
8 the COO, and Mike was pretty vocal in his displeasure with the
9 fact that, you know, I had let consensus get ahead of itself,
10 and as a consequence all the good work that Autonomy had done
11 to close the quarter and deliver the revenues was going to be
12 lost because market expectations were too high, and that was my
13 fault.

14 Q. When you say he was vocal, what do you mean?

15 A. Well, he was swearing at me across the boardroom table.

16 Q. What are the consequences of missing the consensus
17 estimate?

18 A. Normally your share price will go down.

19 Q. Drawing your attention back to the press release, Exhibit
20 57, further down there is some rows where it says, "revenues."
21 Do you see that?

22 A. I do, yes.

23 Q. What were Autonomy's publicly reported revenues for March
24 of 2009?

25 A. \$129,779,000.

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1 Q. Beneath that there is a term "gross profit." Do you see
2 that?

3 || A. I do.

4 Q. There is something called "gross profit margin." What is
5 that?

6 **A.** The gross profit margin is a calculation, a margin
7 calculation which removes the cost of sales and is used within
8 the software industry and particularly by Autonomy to
9 demonstrate the purity of the business model. It was a
10 software-based business, and, as such, should have a high gross
11 margin.

12 Q. When you say it was used particularly by Autonomy, what do
13 you mean by that?

14 A. So part of the equity story that was communicated to
15 investors included the fact that Autonomy had a very high gross
16 margin, probably one of the highest in the industry. And this
17 was to do with the composition of its revenues being basically
18 software licenses, cloud subscription revenues or services.

19 Q. What do you mean by cloud subscription revenue?

20 A. So in the software industry, there are basically two
21 different ways of recognizing revenues. The first is basically
22 an upfront license, which is traditionally how software
23 companies operated in I would say prior to the 2000 sort of
24 time frame where you would sell a license, let's say, for a
25 million dollars; you would recognize that million on that day,

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1 and it would be booked as revenues on your profit and loss.

2 What we see more and more so these days is what's known as
3 cloud subscriptions. This is a ratable revenue stream. So
4 basically what you have is a company will basically contract
5 into maybe a one, two or three-year period. Let's say that
6 that three-year period was 3 million in revenues. Then you
7 would recognize a quarter of one year's revenues each quarter
8 as a subscription. So in that case it would be \$250,000 per
9 quarter for the length of the contract.

10 **Q.** During your tenure in investor relations, did you have
11 occasion to discuss this concept of gross margin with Sushovan
12 Hussain?

13 **A.** We would have -- we would have discussed the gross margin
14 and the performance of the business based on gross margin, yes.

15 **Q.** Was this a metric that he paid attention to?

16 **A.** Absolutely.

17 **Q.** How so?

18 **A.** As I mentioned, the equity story was built around the high
19 gross margin. The gross margin was a metric that was called
20 out in pretty much every earnings call and every interaction
21 with investors relating to the purity of the business model.
22 So it would be something that was discussed internally pretty
23 much every set of results.

24 **Q.** What do you mean by the purity of the business model?

25 **A.** So Autonomy at the time was pretty unique in the industry

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1 insofar it was very, very focused on -- on high margin software
2 licenses, had a lot less services revenues than your typical
3 software company. A typical software company would have -- or
4 does have around 30 percent of its revenues as services.

5 Autonomy was less than 10 percent. Every acquisition that
6 Autonomy did, it would basically reduce the amount of services
7 revenues that it did, so that your mix was -- was these high
8 margin licenses, subscription, and maintenance revenues.

9 **Q.** During your road shows with investors, was this purity of
10 the business model a selling point for Autonomy?

11 **A.** It was a foundation of the growth story and the business
12 model, yes.

13 **Q.** Let me please draw your attention to the next exhibit,
14 what is marked as 2762.

15 Is this a true and correct copy of an email that you sent
16 to Mike Lynch and Sushovan Hussain on or about June 30th of
17 2009?

18 **A.** I believe so, yes.

19 **MS. LITTLE:** Mr. Leach, I don't think this was in the
20 exhibits you designated. 2762?

21 **THE COURT:** 2762.

22 **MS. LITTLE:** No objection.

23 **THE COURT:** Admitted.

24 (Trial Exhibit 2762 received in evidence)

25

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1 **BY MR. LEACH:**

2 **Q.** Mr. Geall, I draw your attention to the top portion of the
3 email. There is an attachment titled "Fred Astaire note V1."
4 Do you see that?

5 **A.** I do.

6 **Q.** What is that a reference to?

7 **A.** This is the attachment that came with the email.

8 **Q.** Fred Astaire, is that a joke between you and Mr. Hussain?

9 **A.** This was a commentary on a note written by the broker,
10 Astaire Securities, so it was, I suppose, a pun or a play on
11 words with Astaire.

12 **Q.** Okay. A comparison to the American dancer with Ginger
13 Rogers?

14 **A.** I believe so, yes.

15 **Q.** Why were you sending this to Mr. Hussain and Dr. Lynch?

16 **A.** So this particular analyst, Paul Moreland, had written a
17 sort of a bearish note on Autonomy. So I had reviewed the note
18 to, you know, outline the issues that the analyst was raising
19 so that we could respond to any incoming questions from
20 investors or other analysts.

21 **Q.** Why were you soliciting Mr. Hussain's input for this?

22 **A.** He was the CFO of the company. I would always solicit his
23 input.

24 **Q.** Let's look, please, at the attachment.

25 Page 2 of the exhibit, please, Ms. Margen.

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1 And I draw your attention down to the bottom portion where
2 it says, "looking for explanations for weakness." Do you see
3 that?

4 **A.** I do.

5 **Q.** Beneath that, there is some numbers, 1 and 2. What do you
6 understand was being described here?

7 **A.** So the first part is a -- is basically a statement
8 relating to the research notes, so the commentary was around
9 something called "day sales outstanding," which have a linkage
10 to cash conversion. And this particular analyst, his forte was
11 cash conversion of companies; that's how he analyzed the
12 performance of the business, and, you know, was drawing the
13 cash conversion of Autonomy's performances as a concern.

14 And then after that, there's basically a statement in
15 italics relating to, you know, why this wasn't a concern for
16 Autonomy.

17 **Q.** Okay. So the italicized portion is your proposed
18 response; is that fair?

19 **A.** Potentially it could have been, yes.

20 **Q.** And it was what you were seeking input for from
21 Mr. Hussain?

22 **A.** Yes.

23 **Q.** You mentioned something called cash conversion. What is
24 that?

25 **A.** So cash conversion is the ability for a business to

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1 convert its revenues into cash. The motto is "cash is king,"
2 and companies that have a high margin tend to generate or
3 should generate more of their revenues or turn that into cash,
4 so cash can be used for reinvestment, so it's a positive for a
5 company.

6 **Q.** If we can please look at the next page up at the top.

7 And I draw your attention to question 4 or item 4 where it
8 says, "when sales are not converted to cash/barter deals." Do
9 you see that?

10 **A.** Yes, I do.

11 **Q.** What is a barter deal?

12 **A.** A barter deal tends to be a deal between two
13 counterparties in the software industry. It could be, you
14 know, effectively the swapping of products. So both would
15 recognize revenues or potentially recognize revenues, but there
16 wouldn't necessarily be any cash flow between them. Like a
17 swap deal. Like a swap deal.

18 **Q.** And as an analyst, what type of concern does a barter deal
19 raise?

20 **A.** It's not necessarily a true reflection of the performance
21 of the business.

22 **Q.** What do you mean by that?

23 **A.** Most analysts wouldn't consider it as -- as bona fide
24 revenues.

25 **Q.** Why?

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1 **A.** Because somebody didn't buy anything.

2 **Q.** And the bullet -- the line here "when sales are not
3 converted to cash/barter deals," what did you understand the
4 concern Mr. Moreland and Astaire to be raising and that you
5 were trying to respond to with Mr. Hussain?

6 **MS. LITTLE:** Objection as to Mr. Moreland's state of
7 mind.

8 **THE COURT:** Overruled. It's directed to this witness'
9 understanding of Mr. Moreland's state of mind.

10 **THE WITNESS:** So, I mean, Paul Moreland was looking
11 for reasons why cash conversion was not what it should have
12 been. And one of the questions he was raising was whether
13 barter deals were something that Autonomy was undertaking.

14 **BY MR. LEACH:**

15 **Q.** And in italics below, could you please read the -- that
16 italicized portion for us?

17 **A.** "Autonomy does not undertake barter deals. Similarly, we
18 do not revalue existing debtors on acquisition to increase the
19 deferred income balances. The complaint from many analysts is
20 that deferred is too low post acquisition, not too high."

21 **Q.** What were you saying there?

22 **A.** What I was saying was that Autonomy doesn't do barter
23 deals, so it shouldn't be a concern.

24 Also, there is a statement here relating to effectively
25 debtors, which is another concern that sometimes analysts have,

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1 which is, you know, where you've basically sold a license but
2 haven't been paid by the customer.

3 After a certain period of time, you should write down that
4 deal and basically redo your financial statements, potentially.

5 Q. Let me draw your attention to the next exhibit, please,
6 Exhibit 2763.

7 Do you recognize this document?

8 A. I do, yes.

9 Q. Is this a true and correct copy of an email you received
10 with a draft PowerPoint relating to Autonomy's earnings
11 announcement for the second quarter of 2009?

12 A. I believe so.

13 **THE COURT:** Admitted.

14 (Trial Exhibit 2763 received in evidence)

15 **BY MR. LEACH:**

16 Q. Let me draw your attention, Mr. Geall, to the top portion
17 of the email.

18 There is some individuals listed there, one of whom is
19 Edward Bridges. Who is he?

20 A. Edward Bridges was the managing director at a company
21 called Financial Dynamics. Financial Dynamics was an advisory
22 firm that Autonomy used for corporate communications.

23 Q. What is Financial Dynamics?

24 A. It's a company that was in the UK, based in the UK that
25 provided corporate communications advisory for publicly listed

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1 companies.

2 Q. Who is Peter Goodman?

3 A. Peter Goodman was an employee of Autonomy. He worked for
4 me in investor relations.

5 Q. What is Mr. Goodman circulating to you and others at
6 Autonomy here?

7 A. This would have been a draft for the presentation that we
8 would have used for the quarterly results, in this case the
9 second quarter of 2009.

10 Q. Was it common practice for -- during your tenure at
11 Autonomy, to prepare a PowerPoint for investors, along with the
12 press release that Autonomy issued?

13 A. Yes.

14 Q. And did you have a hand in drafting those when you were in
15 investor relations?

16 A. Yes.

17 Q. Who else was involved in that?

18 A. So, I mean, these took a similar format each quarter.
19 They would normally be started by Peter Goodman, who would do
20 the bulk of the work, and then there would have been
21 contributions potentially from the marketing team if it related
22 to customer references, from Steve Chamberlain and Sushovan as
23 it related to the financial characteristics and financial
24 performance of the business, potentially some commentary from
25 Mike Lynch relating to the strategy and direction of the

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1 business.

2 Q. Let me please draw your attention to the back half of this
3 PowerPoint, page 24 of the exhibit.

4 The title of this slide is "answer to questions received."
5 Do you see that?

6 A. I do, yes.

7 Q. What is this portion of the PowerPoint?

8 A. So this -- this was part of an appendix. The appendix
9 wouldn't necessarily have been presented as part of the formal
10 presentation, but was there for reference for investors and for
11 analysts so that they had additional information where
12 required.

13 Q. And the questions received, what are the questions
14 received? What do those relate to?

15 A. So what Autonomy had started to do during this time period
16 was to publish questions and answers. So where there were
17 questions coming from the financial community, from investors
18 or analysts, whether positive or negative, these would be
19 published to the -- to an investor bulletin board where
20 Autonomy would answer questions so that they were there and
21 transparent for all investors to go and look at and compare.

22 Q. Who had responsibility for the investor bulletin board?

23 A. The responsibility was ultimately with myself in investor
24 relations.

25 Q. For finance questions, would anybody within Autonomy

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1 review those questions and answers before they were posted?

2 **A.** Yes. It was common practice that, you know, all questions
3 were reviewed normally by Steve Chamberlain and Sushovan from a
4 financial perspective, and from Mike for an operational
5 strategy perspective.

6 **Q.** On this slide down at the bottom, one of the questions is
7 "Do you do barter deals? If so, could you quantify them." Do
8 you see that?

9 **A.** I do, yes.

10 **Q.** And what is the answer on this slide?

11 **A.** No, we do not do barter deals.

12 **Q.** Where did you get that information?

13 **A.** This information I would have discussed with -- with
14 Sushovan and Steve Chamberlain.

15 **Q.** You testified earlier, Mr. Geall, in road shows -- in road
16 shows you would talk about Autonomy's equity story. Do you
17 recall that testimony?

18 **A.** I do.

19 **Q.** What do you mean by equity story?

20 **A.** It was -- I would say -- or it is good practice for a
21 company to understand how it differentiates itself in the
22 market, what are the growth drivers, why is it different to
23 other companies. Any investor could be faced with thousands of
24 potential companies that they can invest in. So building a
25 very clear, concise, easy to understand equity story enables

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1 investors to understand why they should own your stock.

2 Q. And in this 2009 time period, what was the equity story
3 that you articulated to investors?

4 A. So in 2009, you need to remember the time period --
5 right? -- just after 2008 and the financial crisis, so a lot
6 of -- a lot of the opportunity that Autonomy was seeing at that
7 time was based on regulatory investment. So financial services
8 institutions that were being sued as part of the -- as part of
9 the sort of post Lehman's effect where investing in eDiscovery
10 tools and other tools that helped them with that litigation
11 process. And that was -- that was a growth driver for Autonomy
12 at a time when other businesses were still struggling.

13 Another part of the equity story was -- was the
14 accelerated growth from -- from acquisitions. So Zantaz being
15 one acquisition, and then around this time frame as well
16 Interwoven, you see here. Interwoven revenues is called out.
17 This was an acquisition that was done in an area where Autonomy
18 was delivering accelerated growth and improved margin to that
19 acquired business.

20 Q. Was Autonomy's gross margin important to the equity story,
21 as you have described it?

22 A. Yes.

23 Q. How so?

24 A. As I mentioned before, it was an indication of the purity
25 of the business model. The fact that Autonomy had a pretty

1 stable set of revenues from the OEM business, which are also
2 high margin because the sales cost was very low, as well as
3 this, you know, attractive mix of cloud subscription revenues
4 and license revenues that were also high margin.

5 **Q.** You mentioned the term OEM business. What does that mean?

6 **A.** OEM stands for -- was taken from the car industry for
7 original equipment manufacturer, but what it relates to in the
8 context of the software industry is where a vendor has a piece
9 of technology that is being utilized by other software
10 companies. So in the case of IDOL, IDOL had a connector
11 portfolio that it acquired from a company call Verity, and that
12 was being licensed by other software companies, and then
13 technically when they sell their business, they should pay --
14 or when they sell their product, they will pay a royalty back
15 to Autonomy. So it's a nice way of scaling the business,
16 because you're letting the entire industry sell your product
17 for you.

18 **Q.** Let me please draw your attention to what has been marked
19 as Exhibit 2765.

20 Do you have that in front of you, Mr. Geall?

21 **A.** I do.

22 **Q.** Is this a true and correct copy of an email that Peter
23 Goodman sent to you, Sushovan Hussain, and Dr. Lynch?

24 **A.** I believe it to be so.

25 **MR. LEACH:** Your Honor --

1 **THE COURT:** Admitted.

2 (Trial Exhibit 2765 received in evidence) .

3 **MR. LEACH:** Thank you, Your Honor.

4 **Q.** The subject of this, Mr. Geall, is Q and A revised. Do
5 you see that?

6 **A.** Yes, I do.

7 **Q.** What does that refer to?

8 **A.** Well, the Q and A refers to questions and answers, and it
9 relates to a document or the attachment, investor Q and A
10 where, you know, a number of questions and associated answers
11 are being discussed.

12 **Q.** Is that a reference to the website you described where
13 investors could have their questions posted and Autonomy would
14 respond to them?

15 **A.** Yes. So the likelihood with these -- this document would
16 then be uploaded to the investor bulletin board.

17 **Q.** Do you know why Mr. Goodman is sending this to you and
18 Dr. Lynch and Mr. Hussain?

19 **A.** Well, in this case he's asking for Mike's okay, and he
20 comments to Mike relating to the answers that are being
21 generated or being upgraded.

22 **Q.** Let me draw your attention to page 6 of this exhibit.

23 And do you see the question and answer beneath 12th May,
24 2009?

25 **A.** I do.

1 Q. Is that the dating convention in the UK, to have the
2 number before the month?

3 A. Yep.

4 Q. And the question is "Do you do barter deals?" Do you see
5 that?

6 A. No, not in the -- okay. Well, I seem to have a -- oh,
7 sorry. 12th of May. I do.

8 Q. Are we on page 6, Mr. Geall?

9 A. Yeah. I was looking at the 12th of May slightly below.

10 Q. Was this the same question that you were addressing with
11 Mr. Moreland at the end of the second quarter of 2009?

12 A. It would have been a continuation of that, yes.

13 Q. Let me move forward in time, Mr. Geall, to September of
14 2009.

15 Are you familiar with something called SPE?

16 A. I am, yes.

17 Q. What is SPE?

18 A. SPE stands for structured probabilistic engine. SPE also
19 related to some of the functions within IDOL.

20 Q. In or around September of 2009, did Autonomy announce a
21 new product launch relating to SPE?

22 A. It did.

23 Q. Let me draw your attention to what has been marked as
24 Exhibit 199.

25 Is this a copy of a press release dated September 16th,

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1 2009, announcing the launch of SPE?

2 A. It appears so, yes.

3 **MR. LEACH:** Your Honor, I offer Exhibit 199.

4 **MS. LITTLE:** No objection.

5 **THE COURT:** Admitted.

6 (Trial Exhibit 199 received in evidence)

7 **BY MR. LEACH:**

8 Q. Did you have a hand in drafting this, Mr. Geall?

9 A. No.

10 Q. Okay. Why is that?

11 A. This is a press release which went out to the industry
12 press. It wasn't a financial release.

13 Q. So you're responsible for the financial releases, others
14 are responsible for the product releases?

15 A. Correct.

16 Q. The title here is Autonomy applies its advanced meaning
17 based technology to transform database market. Do you see
18 that?

19 A. I do.

20 Q. What did Autonomy tell the market IDOL structured
21 probabilistic engine was?

22 A. IDOL SPE was a new product that was introduced into the
23 market. It was doing something unique that hadn't been done
24 before, which was applying the mathematical capabilities of
25 IDOL, but to structure to data rather than unstructured data,

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1 and that would open up a new market opportunity, so what was
2 known as an addressable market that would accelerate growth for
3 Autonomy.

4 Q. You mentioned some terms, "structure data and unstructured
5 data." What are those?

6 A. So basically business information broadly comes in two
7 forms, structured or unstructured. Structured is when it's in
8 a database. So I don't know, think of it in your Microsoft
9 access database or even in a -- potentially even in an Excel
10 spreadsheet where you are able to quickly search and find that
11 information because it's being tagged. You know where it is in
12 the database, so it's quickly -- it's easy to go and find it.
13 So think of it, you know, like putting something in a specific
14 slot on your bookshelf, you know where to go to get it.

15 Unstructured data is the information that we have in
16 emails, it's the information that we have when we record
17 telephone calls, it's the electronic information that doesn't
18 sit in the database, and that is what is known as unstructured
19 data.

20 Q. Let me please draw your attention to the second page of
21 this press release.

22 In the top paragraph, do you see the reference to how SPE
23 can be used by an airline and customers searching for
24 particular flights?

25 A. I do.

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1 **Q.** Would you please read that for us.

2 **A.** "For instance, an airline can leverage IDOL SPE to improve
3 the online customer experience and increase sales. A customer
4 searching for a flight from New York to San Francisco at a date
5 and time when all flights are sold out will automatically be
6 offered an alternative airport such as Oakland or San Jose
7 rather than returning no results to the customer's search.
8 IDOL SPE infers the result from patterns in the data and its
9 usage without the need for scripts or geographic information."

10 **Q.** In your role in investor relations and in dealing with
11 investors, did you undertake some research about IDOL SPE to
12 try to better understand what this product was and what it
13 might mean for Autonomy?

14 **A.** As an analyst, when I followed Autonomy, I had looked at
15 all of its acquisitions, it's historical acquisitions. One of
16 those acquisitions was a business called NCorp, which was one
17 of the earlier technology acquisitions that Autonomy had made,
18 and that's what basically brought the IDOL SPE functions into
19 the IDOL product before -- well before this press release.

20 **Q.** Please look at what has been marked as Exhibit 3. Do you
21 recognize this?

22 **A.** It's -- it's a document probably to the Stock Exchange in
23 the UK from 2005 relating to an acquisition.

24 **Q.** An acquisition of NCorp by Autonomy; is that right?

25 **A.** Correct.

1 **THE COURT:** Admitted.

2 (Trial Exhibit 3 received in evidence)

3 **BY MR. LEACH:**

4 **Q.** So this press release, Mr. Geall, is four years prior to
5 the announcement of SPE in September of 2009?

6 **A.** Correct.

7 **Q.** What is the subject of the press release?

8 **A.** "Autonomy announces strategic acquisition of revolutionary
9 structured data technology."

10 **Q.** What is the date of this release?

11 **A.** The 21st of February, 2005.

12 **Q.** Let me draw your attention to the top of page 2 of this
13 press release.

14 And I draw your attention to the line beginning for
15 example, say any --

16 **A.** Yes.

17 **Q.** Is this language that -- and if we could also highlight
18 the second example, please, Ms. Margen.

19 Would you please read that second example for us?

20 **A.** "For example, say a traveler was looking for a flight from
21 San Francisco to New York costing less than \$300 on Wednesday,
22 although no exact matches exist. Using its understanding of
23 the specified data and its usage, Autonomy's PPSA can
24 automatically identify a flight from Oakland to New York as
25 highly suitable and relevant to the user's criteria."

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1 **Q.** Did this similarity in language between the NCorp
2 announcement and SPE cause you any concerns, Mr. Geall?

3 **A.** It did, yes.

4 **Q.** Why was that?

5 **A.** My feeling was that most analysts, whenever they see a new
6 product launch, will go to Google and search for information on
7 this. I did this in my role at Autonomy, and basically got a
8 near identical match between the press release that was made
9 for IDOL SPE and actually some of the press coverage that was
10 done on the back of the NCorp acquisition in 2005, and felt
11 that we would get challenging questions from investors and
12 analysts who noticed the similarity.

13 **Q.** Why was that of a concern to you?

14 **A.** The indication or the implication is that IDOL SPE as a
15 set of functionality already existed in IDOL and was already
16 being sold to customers, so why was this going to open up this
17 wonderful new market opportunity and new growth rates.

18 **Q.** Did you speak to Dr. Lynch about the similarity between
19 the announcement of NCorp and the announcement of IDOL SPE?

20 **A.** I did.

21 **Q.** What did he say?

22 **A.** He basically dismissed my statement as stupid, and
23 wouldn't probably go and do that, so don't worry about it.

24 **Q.** Let me please draw your attention to what has been marked
25 as Exhibit 247.

1 Do you recognize this document?

2 **A.** I do.

3 **Q.** Is this a true and correct copy of an email you sent to
4 Sushovan Hussain and Mike Lynch in October of 2009 relating to
5 a company called Catalyst?

6 **A.** I believe it to be.

7 **MR. LEACH:** Your Honor, I offer Exhibit 247.

8 **THE COURT:** Admitted.

9 (Trial Exhibit 247 received in evidence)

10 **MR. LEACH:** Ms. Margen, if we could please look at the
11 first email in the chain. Perfect. Thank you.

12 **Q.** Mr. Geall, this is from someone named Ian MacLeod at a
13 company call Catalyst.

14 What is Catalyst?

15 **A.** Catalyst is a San Francisco-based boutique, M&A adviser
16 that was set up by Frank Quattrone.

17 **Q.** Who is Frank Quattrone?

18 **A.** Frank Quattrone is an investment banker in the U.S.
19 market.

20 **Q.** Were you familiar with him?

21 **A.** Yes.

22 **Q.** How were you familiar with him?

23 **A.** I mean, Frank was or is recognized as one of the
24 rainmakers in the industry. Many technology deals will have
25 Catalyst either acting on their defense or as a target.

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1 Q. What do you mean by rainmaker?

2 A. He's the -- he's the banker that people want to use if
3 they want to sell their company or if they want to buy a
4 company.

5 Q. During your time in investor relations, this 2009 to
6 2000 -- early 2010 time period, did you have occasion to meet
7 with bankers at Catalyst?

8 A. I did, yes.

9 Q. What did you do?

10 A. Sorry, in the meetings or --

11 Q. Just how many meetings did you have?

12 A. So I had -- well, I would have had an initial introductory
13 meeting with Catalyst in London. I was introduced to the firm
14 through an investor of Autonomy, Phil Pierson at GLG. He
15 introduced me to one of the people in this email, Jean
16 Tardy-Joubert, who was running the European office at Catalyst.
17 We had an initial meeting just to discuss the industry, for him
18 to position Catalyst and the potential value that Catalyst
19 could bring working closely with Autonomy.

20 On the back of that meeting, we proposed a meeting to Mike
21 to meet with Frank Quattrone. Frank Quattrone was coming to
22 the UK and was keen to meet with Mike Lynch. So on the back of
23 that initial meeting, we had a meeting with Frank, and Jean
24 Tardy-Joubert would have been involved as well.

25 Q. Who do you mean by "we," Mr. Geall?

1 A. We. So myself and Mike Lynch.

2 Q. Let's go to the top portion of this email, please,
3 Ms. Margen.

4 Would you please read what you wrote here to Mr. Hussain?

5 A. "They continue to want to act as our defense. I believe
6 Quattrone believes a bid is imminent. That was clear based on
7 the work he had done for the last meeting."

8 Q. What did you mean by "they continue to want to act as our
9 defense?"

10 A. Well, I mean, my feeling from the meetings with Catalyst
11 was they wanted to be the adviser to Autonomy. Based on their
12 assessment of the software industry at that time, they felt
13 that Autonomy was an attractive asset to acquire, and they
14 wanted to represent Autonomy if a deal was discussed.

15 Q. Roughly, how many times did you meet with Catalyst during
16 your time period in IR?

17 A. So I met with Catalyst, as I mentioned, initially in
18 London, then sponsored a meeting in London with Mike and Frank,
19 I met with Ian MacLeod when I was in San Francisco in late
20 2009, and then I had a follow-up meeting with Mike and Frank
21 Quattrone in London in early 2010, so four, I think.

22 Q. Thank you.

23 Let me move forward in time to the earnings announcement
24 for the third quarter of 2009.

25 Do you recall that earnings announcement, Mr. Geall?

1 **A.** I do, yes.

2 **Q.** Would you please look at what has been marked as Exhibit
3 289. Is this a true and correct copy of Autonomy's quarterly
4 earnings release for the third quarter of 2009?

5 **A.** I believe it to be, yes.

6 **THE COURT:** Admitted.

7 (Trial Exhibit 289 received in evidence)

8 **BY MR. LEACH:**

9 **Q.** If we could please blow up the first half of this.

10 Wonderful. Thank you.

11 Mr. Geall, up at the top, it says, "Autonomy Corporation
12 PLC announces results for the third quarter and nine months
13 ended September 30th, 2009." Do you see that?

14 **A.** I do.

15 **Q.** On or around September 30th, 2009, did you learn of the
16 potential of a significant hardware contract between Autonomy
17 and EMC?

18 **MS. LITTLE:** Objection. Leading.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** I did, yes.

21 **BY MR. LEACH:**

22 **Q.** What happened?

23 **A.** So I had left the office one evening. I got a phone call
24 from Peter Goodman who --

25 **MS. LITTLE:** Objection. Hearsay.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** I got a phone call from Peter Goodman --

3 **THE COURT:** Again, this is going to state of mind, not
4 necessarily for the truth of the matter.

5 **MR. LEACH:** Yes, Your Honor.

6 **THE COURT:** I don't know enough about it. Yeah. Go
7 ahead.

8 **THE WITNESS:** So Peter Goodman phoned me, because he
9 had seen a document on -- that had been left in the office on
10 the printer, I believe, that related to a contract between
11 Autonomy and EMC for a significant amount of hardware, and he
12 was asking me for advice as to what to do with it, because it
13 looked like sensitive information.

14 **BY MR. LEACH:**

15 **Q.** What did you tell him to do with it?

16 **A.** I asked him to see whether Andrew Kanter was still in the
17 office, because it was his document. And when he told me that
18 he wasn't, he felt he had gone, and to either shred it or to
19 lock it up.

20 **Q.** Did the potential of this large hardware contract cause
21 you any concerns?

22 **A.** Subsequently it did. It was -- it was unusual as to why
23 that would have been there, and it was a large amount of money.

24 **Q.** What do you mean it was unusual?

25 **A.** Well, Autonomy had built an equity story around the purity

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1 of the business model. It was a software-based business model.
2 It had started to build a cloud subscription-based business,
3 which would have led to some investment in capital expenditure
4 around data centers. But that wasn't significant. It wasn't a
5 huge amount. So, you know, I wouldn't have expected Autonomy
6 to be, you know, doing large deals with hardware manufacturers.

7 **Q.** Why wouldn't you expect that?

8 **A.** Because it wasn't a common part of their business.

9 **Q.** And what about the nature of the contract and the amount,
10 if anything, caused you concern?

11 **A.** I mean, the concern for me was the quantum, the sort of
12 the 45 million. The reason being this was similar to the
13 amount of additional costs that Autonomy had in Q3/2009, which
14 had been basically credited to the launch of IDOL SPE.

15 **Q.** Why was that of note to you?

16 **A.** Well, as I mentioned before, IDOL SPE to me didn't feel
17 like a new product. I thought it was a set of capabilities
18 that IDOL already had. There was a significant amount of
19 unusual costs in Q3/2009, so in this financial statement, the
20 aggregate was around 45, 46 million. And over time, the
21 similarity between those two numbers, you know, I thought was
22 unusual and, you know, questioned whether the two were related.

23 **Q.** Let me draw your attention to some of the numbers in the
24 press release, Mr. Geall.

25 Do you see the line revenues, 191,606?

1 A. I do, yes.

2 Q. What does that mean?

3 A. So 191,606,000 would have been the revenues reported by
4 Autonomy in the third quarter of 2009.

5 Q. Beneath that, it says, "gross profit adjusted." Do you
6 see that?

7 A. I do, yeah.

8 Q. What was the amount?

9 A. \$163,962,000.

10 Q. And what was the gross profit margin?

11 A. 86 percent.

12 Q. What again is gross profit margin?

13 A. So gross profit margin is the calculation that basically
14 strips out the cost of goods sold, which for a pure software
15 business should be a high margin, because it's a relatively low
16 cost.

17 Q. What do you mean by a pure software business?

18 A. A business that only sells software.

19 Q. And was this gross profit margin adjusted of 86 percent
20 unusual for Autonomy?

21 A. It was certainly lower than it had been historically.

22 Q. Please explain for us how it was lower.

23 A. So the trend in gross margin, if you look back over the
24 years, had been anywhere between 91 to 95, maybe even 96
25 percent at times, and that stability was something that, you

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1 know, the business prided itself on and investors looked
2 towards. So anything below, substantially below that would
3 have -- would have been -- would have been questioned.

4 Q. What was the gross profit adjusted for the prior year,
5 September 30th of 2008?

6 A. 92 percent.

7 Q. And what was the amount of the gross profit adjusted?

8 A. Sorry. So 117,310,000.

9 Q. What are those numbers there in that column, September 30,
10 2008?

11 A. So the second column, this relates to the results for
12 Autonomy in the prior year. So looking at the historical
13 performance of the business.

14 Q. And how did those numbers for the third quarter of 2008
15 compare to those numbers for the third quarter of 2009?

16 A. Well, as you can see, the gross margin of 86 percent is --
17 is basically 6 percentage points lower than it was the prior
18 year.

19 Q. Please look further down in the press release. There's a
20 line under third quarter highlights. The third bullet where it
21 says, "launched IDOL SPE with stronger than expected response
22 to Quick Start program," do you see that?

23 A. I do.

24 Q. The reference to IDOL SPE, that was the press release that
25 we observed from earlier in September?

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1 **A.** That is correct.

2 **Q.** What is the Quick Start program? What did you understand
3 it to be?

4 **A.** I understood the Quick Start program to be an initiative
5 to get IDOL SPE into Autonomy's customers or Autonomy's
6 prospects as quickly as possible. A target of 30 or 40
7 customers was selected. And basically a piece of hardware,
8 appliance with IDOL SPE was basically put into the data center
9 of those customers so they could get access to IDOL SPE very
10 quickly. Hence the name Quick Start.

11 **Q.** Where did you get that understanding?

12 **A.** I got that understanding from discussions with Mike and
13 Sushovan.

14 **Q.** Going back to the gross profit margin difference between
15 86 percent and 92 percent, was that an important difference for
16 Autonomy?

17 **A.** Yes.

18 **Q.** Why?

19 **A.** Because, as I mentioned, the gross margin had tended to be
20 stable and in excess of 90 percent.

21 **Q.** And why does that matter?

22 **A.** Because this was a high margin business based on selling
23 software, and it -- the story was built on that high margin
24 profile and the stability of that high margin profile. So
25 anything that suggested that that had changed would be

1 questioned by the financial community.

2 Q. Let me please direct your attention to the income
3 statement in the press release on page 6 of the exhibit.

4 What is this portion of the press release, Mr. Geall?

5 A. So this is a -- basically a copy of the income statement.
6 So this is the detailed profit and loss accounts for the
7 business that basically compares the current quarter, so the
8 third quarter of 2009 with the prior year, but also compares
9 the nine-month period. So the three quarters, first, second
10 and third quarter in 2009 versus the prior year.

11 Q. So the column to the left, that's the -- those are the new
12 numbers? That's what's being announced for September of 2009?

13 A. Exactly.

14 Q. And the column to the right, September 30th, 2008, that's
15 what happened in the three months in the prior year?

16 A. Correct.

17 Q. And then those two columns to the right, can you tell us
18 again what those are?

19 A. So this is the -- the aggregate of the three quarters, so
20 Q1, Q2, and Q3, an aggregate comparing to the prior year.

21 Q. Let me draw your attention to the line for sales and
22 marketing. Do you see that?

23 A. I do, yes.

24 Q. What does that represent?

25 A. So sales and marketing was the -- basically the costs in

1 the period relating to sales activity, so paying salespeople
2 their bonuses and their commissions as well as their salary,
3 any marketing investment that the business would have
4 undertaken, so this could have been trade shows or, you know,
5 marketing events that were undertaken, is the majority of what
6 you would expect in sales and marketing.

7 Q. Is sales and marketing part of cost of revenues?

8 A. It's not part of costs of goods sold, no. It's part of --
9 basically the operating costs of the business.

10 Q. How are those two things different?

11 A. Well, so basically normally what a company does is they
12 have their costs of doing business. This is the so-called
13 costs of goods sold. If I'm a manufacturing business, then I
14 buy lots of inventory and then I sell that, so I tend to have a
15 low gross margin, because I have high costs.

16 For more services or software-based businesses, the
17 majority of your costs are in R&D, sales and marketing, or
18 what's known as G&A, which is general and administrative, and
19 this is used to calculate what is known as the operating
20 margin, so the operating performance of the business.

21 Q. What was the amount of sales and marketing expense in the
22 third quarter of 2009?

23 A. 59,306,000.

24 Q. Was that unusual?

25 A. Yes.

1 Q. Why?

2 A. Because if you take a look at the growth in the business
3 between the third quarter of 2008 and the third quarter of
4 2009, you would expect sales and marketing to grow broadly in
5 line with revenues. So if you look at the 127,105,000 and look
6 at the growth rate to 191,000,606, I think that's about 50
7 percent growth. But if you take a look at the -- sorry, if you
8 take a look at the growth in sales and marketing at 35,390,000
9 and apply a similar growth rate to that, you would probably be
10 at about 51 or 52 million.

11 Q. What did you understand the increase in sales and
12 marketing to be attributable to?

13 A. The increase in sales and marketing was being attributed
14 to the launch of IDOL SPE.

15 Q. Where did you get that understanding?

16 A. From discussions with Mike and Sushovan.

17 Q. And were there aspects of the hardware contract that
18 Mr. Goodman described to you in the launch of IDOL SPE that
19 caused you to question that?

20 A. Well, when looking at all the additional costs that
21 occurred in the third quarter, then there was a marked
22 similarity.

23 Q. What do you mean by that?

24 A. It was the same order of magnitude of additional costs
25 that was being sort of prescribed to R&D costs and sales and

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1 marketing costs, and, you know, that, to me, was looking a
2 little bit too much like a coincidence.

3 **THE COURT:** Ladies and gentlemen, we are going to take
4 our recess now. Remember the admonition. Don't discuss the
5 case, allow anyone to discuss it with you, form or express any
6 opinion. We will start at 1:00 sharp. Thank you.

7 (Luncheon recess was taken at 12:03 p.m.)

8 **AFTERNOON SESSION**

1:00 p.m.

9 (Proceedings were heard out of presence of the jury:)

10 **THE CLERK:** Come to order. Court is now in session.

11 **THE COURT:** Please be seated. Let the record reflect
12 all jurors are present, parties are present.

13 You may proceed.

14 **MR. LEACH:** Thank you, Your Honor.

15 **Q.** Good afternoon, Mr. Geall.

16 **A.** Good afternoon.

17 **Q.** Before the break, we were focused on Exhibit 289, the
18 Q3/2009 press release. Do you still have that handy,
19 Mr. Geall?

20 **A.** I do.

21 **Q.** Let me please draw your attention to page 8 of the
22 earnings release. Excuse me. Page 7.

23 Do you see at the top where it says, "condensed
24 consolidated balance sheet"?

25 **A.** I do.

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1 **Q.** What is a balance sheet?

2 **A.** A balance sheet is a financial statement that records the
3 assets and liabilities of a company.

4 **Q.** Let me draw your attention to the portion under "current
5 liabilities." There's a line for total trade and other
6 payables.

7 Do you see that?

8 **A.** I do, yes.

9 **Q.** What was the amount for the third quarter of 2009?

10 **A.** Sorry. Of trade or other payables?

11 **Q.** The combined, total trade and other payables?

12 **A.** 109,925,000.

13 **Q.** What are trade and other payables?

14 **A.** It's basically money owed to third parties.

15 **Q.** And was that amount, 109 million, unusual for Autonomy?

16 **A.** It was, if you compare it to the prior year. It was more
17 than three times the amount.

18 **Q.** Why was that unusual?

19 **A.** I mean, trade payables effectively represent the cash
20 profile of the business, and there would be some variation year
21 to year, and, you know, if a business is growing, you would
22 expect, you know, the payables number to grow, you know, in
23 proportion with the business, but you wouldn't suddenly expect
24 a major -- a major change.

25 **Q.** Now, will you please look at page 8?

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1 What is this portion of the press release?

2 **A.** So this is the condensed consolidated cash flows.

3 **Q.** What is the statement of cash flow? What does this
4 represent?

5 **A.** So this basically represents the cash movements that the
6 business has made during the quarter, so any investments that
7 they've made, any assets that have been acquired, working
8 capital movements that they've had in terms of, you know,
9 paying creditors or debtors. Just reflects the cash in and the
10 cash out for the business.

11 **Q.** How does the cash flow statement differ from the income
12 statement and the balance sheet?

13 **A.** I mean, the three -- the three statements show three
14 different ways of looking at the company, so the P&L is looking
15 at the revenues and the profitability. Now, there's a tie-in
16 between the P&L and the cash flow in terms of the profitability
17 is what generates the cash that is then measured in the cash
18 flow. But similarly, the balance sheet is derived for
19 movements in cash flow. So the three statements are related,
20 but they have three different views of the business.

21 **Q.** Let me draw your attention to the middle portion of this
22 page. There is a line, "payables." Do you see that under
23 "changes in operating assets and liabilities"?

24 **A.** I do, yes.

25 **Q.** What does that represent? What does "payables" represent?

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1 A. So this was basically the cash that was owed in that
2 quarter to third parties.

3 Q. What was the cash owed to third parties at the end of
4 September 30th, 2009?

5 || A. 43 million 834.

6 Q. What was the cash owed to third parties at the end of
7 September 30th, 2008?

A. It was a negative 3.146 million.

9 Q. What does that mean?

10 A. Because this was a cash movement, it would vary from
11 quarter to quarter, so sometimes it's a negative number,
12 sometimes it's a positive. So this was basically showing that
13 there was basically a negative movement in terms of there was a
14 cash outflow for them as part of the working capital, where in
15 the current year there was effectively a 43 million benefit.
16 So the cash was still sitting in the balance sheets of
17 Autonomy, but was owed to -- effectively to third parties, but
18 hadn't been paid yet.

19 Q. This 43,834,000 in payables at the end of September 30th
20 of 2009, was that unusual?

21 | A. Yes.

22 | Q. Why?

23 A. The cash profile for Autonomy, historically you would
24 expect a negative receivables, as you've seen two lines up, so,
25 you know, the minus -- the minus 20 million for the three

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1 months to the 30th of September.

2 The payable number tended to be a lot smaller in
3 magnitude, so, you know, you could have plus or minus, you
4 know, three, five million in any particular quarter, but it
5 would be unusual to have something of the -- of the magnitude
6 of 43,834,000 that is shown there.

7 Comparing to the prior year of minus 3 and also looking at
8 the full nine months of the prior year where it was only
9 2.6 million shows that this was normally a relatively small
10 number.

11 **Q.** And the \$43 million number, that's a change in the amount
12 that Autonomy owes?

13 **A.** It was a change versus the prior quarter.

14 **Q.** So in one quarter it goes from a small number to \$43
15 million?

16 **A.** You can work it out, because you've got the -- well, you
17 would need the first half results, but you see that for the
18 nine months, the flow was -- or the flow was 42.8 million of
19 which 43 million of that occurred in Q3. So, you know, by
20 definition, it would have been sort of minus -- minus one
21 million for the first six months, and then it went from minus
22 one to effectively plus 43 in that quarter indicating 44, 45
23 million of payables that was -- that left in the quarter.

24 **Q.** What did you understand that \$43 million change to
25 represent?

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1 A. This was -- this related to a number of areas, as it was
2 explained to me. One related to the sales and marketing
3 expense relating to the Quick Start program that included some
4 marketing in the quarter, some trade statements, some -- some,
5 you know, press activity. So there would have been a marketing
6 charge, and it happened quite late in the quarter.

7 Also relating to, you know, the other marketing events
8 around the launch of IDOL SPE.

9 Q. Where did you obtain that understanding?

10 A. Discussions with Mike Lynch and Sushovan Hussain.

11 Q. At the time this press release was issued, Mr. Geall, were
12 there aspects of the hardware contract that Mr. Goodman
13 described to you and your investigation relating to SPE that
14 caused you to question Autonomy's growth story?

15 A. Not specifically the growth story at that point, but, you
16 know, started to -- to, I suppose, raise some red flags in
17 terms of the revenue profile for the business or the revenue
18 contribution for the business.

19 Q. What do you mean by that?

20 A. Well, I mean, there was clearly, you know, some
21 exceptional costs that occurred in that quarter, in Q3/2009.
22 As I mentioned at the start of my statement, you know, we had
23 just come out of the financial crisis, so everyone was waiting
24 for this recovery to come through, which wasn't coming through.

25 So it was -- it was tough to deliver -- tough to deliver

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1 growth, and, you know, Autonomy had been sort of bucking that
2 trend, delivering better growth than many of the peers in the
3 industry that had a tough time because of regulatory
4 compliance, but now you were starting to see some questions
5 that maybe sort of called into question that.

6 **Q.** What were the questions to you?

7 **A.** Why was there this exceptional cost. You know, if it did
8 relate to the contract that Peter Goodman had seen, what did
9 that mean? You know, was the revenue composition essentially
10 as it was purported to be?

11 **Q.** Why were you concerned about the revenue composition?

12 **A.** Because, as I mentioned before, Autonomy was -- was valued
13 as a high growth, high margin software business. And, you
14 know, as we see at the moment, hardware businesses tend to be
15 much lower multiples; right? So a software business can trade
16 on anywhere between 3 and 8 times revenues. If you're a cloud
17 software business, you can trade on 10 to 15 times
18 subscriptions. A hardware business trades on about point six
19 times revenues. So if there was a substantial amount of
20 hardware revenues, then the valuation would have been impacted.
21 That would have been a significantly lower valuation, and then
22 obviously the shareholders would pay a very different price for
23 that.

24 **Q.** And what was it about the SPE aspect to this that, in your
25 mind, raised a concern?

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1 **A.** Whether IDOL SPE was a new product that was going to
2 generate that future growth. If IDOL SPE was functionality
3 that was already included in IDOL, as I believed it was, then
4 there isn't a new market opportunity. There isn't going to be
5 a, you know, 20-30 billion opportunity out there to go and sell
6 and accelerate the business. So it would call into question
7 the growth opportunity the business had and the amount that the
8 investors would be willing to pay for that.

9 **Q.** After the issuance of this press release, did you field a
10 number of questions from certain Autonomy investors?

11 **A.** From analysts and investors, yes.

12 **Q.** Would you please look at what has been marked as Exhibit
13 2767.

14 Do you have that in front of you, Mr. Geall?

15 **A.** I do.

16 **Q.** Is this a true and correct copy of an email that you
17 received from Sushovan Hussain on October 21, 2009, around the
18 time of the earnings release?

19 **A.** I believe it to be so, yes.

20 **THE COURT:** Admitted.

21 (Trial Exhibit 2767 received in evidence)

22 **BY MR. LEACH:**

23 **Q.** If we could start, Mr. Geall -- if you could please orient
24 us. The bottom portion of this appears to be an email from
25 someone named Derek Brown to investor.relations@autonomy.com

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1 with a CC to you and Mr. Hussain.

2 Do you see that?

3 A. I do.

4 Q. Who is Derek Brown?

5 A. Derek Brown was an analyst at a UK brokerage firm, I
6 believe at the time Seymour Pierce.

7 Q. In the "to" line, investor.relations@autonomy.com, what
8 was that?

9 A. This was a general email address that investors and
10 analysts should direct their questions to. So it was an open
11 account for investor relations questions.

12 Q. And do you understand why you and Mr. Hussain were cc'd on
13 this?

14 A. I -- I assumed that Derek wanted to make sure that myself
15 and Sushovan were aware of the questions that he was sending
16 to -- to, you know, what may have been an unmonitored account.

17 Q. Beneath that, there is some language in black and blue on
18 the screen.

19 What do you understand the black portion to be, and what
20 do you understand the blue portion to be?

21 A. So the black text or the black font is the initial
22 questions that Derek submitted via email, and the blue was the
23 initial set of answers that Sushovan had added to that and then
24 forwarded to me.

25 Q. Let me direct your attention, please, to the first

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1 question that Mr. Brown had:

2 "What was the contribution to revenue from the Quick
3 Start program and at what margin? I'm trying to
4 understand the movement in gross margin. Is there some
5 hardware running through the COGS line? I see from your
6 website that the new product COGS was 4 million. What was
7 that related to?"

8 What again was the Quick Start program?

9 **A.** So the Quick Start program was this initiative to get 30
10 or 40 customers onto the IDOL SPE product, and it was basically
11 taking IDOL SPE and putting it onto some hardware and then
12 shipping that to the customer so that they could start using
13 the product very quickly.

14 **Q.** And that was something Dr. Lynch and Mr. Hussain told you?

15 **A.** Correct.

16 **Q.** There's an acronym, COGS. What is COGS?

17 **A.** Cost of goods sold.

18 **Q.** What did you understand Mr. Brown to be asking in this
19 question?

20 **A.** So in this question, he is asking effectively the impact
21 of Quick Start on the gross margin of the business.

22 **Q.** Will you please read Mr. Hussain's proposed response for
23 us?

24 **A.** "Delivering a functioning SPE platform includes hardware,
25 services, etc."

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1 **Q.** What did you understand that to mean?

2 **A.** That Autonomy was shipping hardware and IDOL SPE as part
3 of the Quick Start program.

4 **Q.** In number 3 it reads:

5 "Why was there such a large jump in trade and other
6 creditors from 80M in Q2/09 to 110M in Q3/09?"

7 Do you see that?

8 **A.** I do, yeah.

9 **Q.** What is trade and other creditors?

10 **A.** This is basically a balance sheet item that basically
11 looks at the monies owed.

12 **Q.** Is that another reference to the payables that we saw on
13 the balance sheet in the press release?

14 **A.** Correct, yep.

15 **Q.** And according to this question, there is a jump from 80
16 million in the second quarter of 2009 to 110 million in Q3/09?

17 **A.** Correct.

18 **Q.** What was the answer that Mr. Hussain proposed?

19 **A.** To do with the SPE costs incurred late in the quarter
20 accrued in Q3, but paid in Q4.

21 **Q.** What did you understand that to mean?

22 **A.** That this related to the marketing costs around IDOL SPE,
23 the launch party and other things, and that these were accrued
24 in the quarter, but ultimately wouldn't get paid until the
25 subsequent quarter.

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1 **Q.** Please now look at what has been marked as Exhibit 2769.

2 Is this a true and correct copy of an email you sent to
3 Derek Brown with responses to the questions that he had?

4 **A.** I believe it to be, yes.

5 **THE COURT:** Admitted.

6 (Trial Exhibit 2769 received in evidence)

7 **BY MR. LEACH:**

8 **Q.** Does this email follow the format of before where the
9 answers to the questions are in blue and large caps as opposed
10 to the initial questions from Mr. Brown?

11 **A.** Yes. The bold blue were my answers to the questions to
12 Derek.

13 **Q.** Okay. Would you please read your response to Mr. Brown to
14 his first question, "What was the contribution to revenue from
15 the Quick Start program and at what margin?"

16 **A.** "COGS expenditure related to Quick Start program
17 delivering physical hardware and services to get initial Beta
18 customers up and running. We have not given a revenue
19 contribution. Assume very small at this stage."

20 **Q.** Where did you get that information to respond to
21 Mr. Brown?

22 **A.** From discussions with Sushovan and the email he'd sent me.

23 **Q.** You wrote assume very -- not -- strike that.

24 You wrote: "We have not given a revenue contribution.
25 Assume very small at this stage."

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1 Do you see that?

2 **A.** I do.

3 **Q.** What did that mean?

4 **A.** That related to the revenues from customers for IDOL SPE.

5 So Quick Start was a way of getting the product to the
6 customer. It wasn't a way of generating revenues in the short
7 term.

8 **Q.** Is this another way of saying that revenues from the Quick
9 Start program were very small at this stage?

10 **A.** Correct.

11 **Q.** And what does "very small" mean to you?

12 **A.** I mean, normally I would assume, you know, less than 2 or
13 3 million.

14 **Q.** Can we please look at the next page, please, your response
15 to the third question.

16 Do you see number 3 at the top in black?

17 **A.** I do, yep.

18 **Q.** Was this Mr. Brown's question about why payables went up
19 by \$30 million between the second quarter of '09 and the third
20 quarter of '09?

21 **A.** Yes, it was.

22 **Q.** What was your response?

23 **A.** This was purely do to -- can't speak. Excuse me. This
24 was purely to do with the SPE-related costs that were incurred
25 very late in the quarter. This was accrued in Q3 and will be

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1 paid in Q4.

2 Q. Where did you get that information?

3 A. From Sushovan's email and discussions with him.

4 Q. In this quarter, the third quarter of 2009, did you also
5 participate in a call with analysts relating to the earnings
6 result?

7 A. I did, yes.

8 Q. Was that normal at Autonomy?

9 A. To have a call with analysts?

10 Q. Yes.

11 A. Yes. So every -- every quarter, we would either have a
12 physical meeting with analysts or a call with analysts.

13 Q. What is the purpose of the call with the analysts?

14 A. To communicate the performance of the business in that
15 quarter, to take any questions, and also to set the stage for
16 the subsequent quarter.

17 Q. Would you please look at what has been marked as Exhibit
18 287.

19 Do you have that in front of you?

20 A. I do.

21 Q. Is this a true and correct copy of an email you sent to
22 Josie Oddy with a CC to Mr. Hussain on or about October 19th,
23 2009?

24 A. (Witness reviews document.)

25 I believe it to be so, yeah.

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1 **THE COURT:** Admitted.

2 (Trial Exhibit 287 received in evidence)

3 **BY MR. LEACH:**

4 **Q.** If we could please look at the top.

5 Who is Josie Oddy? Am I pronouncing that correctly?

6 **A.** Yes, I believe so.

7 She was -- she was the secretary receptionist in the
8 office at Piccadilly.

9 **Q.** And is this you directing her to print certain documents
10 relating to the analyst call?

11 **A.** That's correct.

12 **Q.** Are those the attachments, QA first draft, MG version 14,
13 and financial cheat sheet?

14 **A.** They are, yes.

15 **Q.** Would you please look at the -- at page 2 -- excuse me --
16 page 3 of the exhibit.

17 What is this?

18 **A.** So this was a sort of a -- I suppose, a cheat sheet that
19 was created and was placed in front of whoever was speaking to
20 the financial analysts and, you know, was giving some sort of
21 aid as to the type of questioning, what type of questioning,
22 but also who should probably answer that question.

23 **Q.** Up at the top there is a row that says, "easy, okay,
24 trick, to MRL, short answer, website."

25 Do you see that?

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1 **A.** I do, yes.

2 **Q.** What do those terms mean?

3 **A.** So this was a visual cue that Mike used to indicate
4 whether this was an easy question, whether it was okay to
5 answer, whether it was a trick question, whether he should
6 answer, MRL, whether it should just be a very brief and short
7 answer, or whether the question should be referred to the
8 website.

9 **Q.** Did you have an understanding of why this document was
10 created?

11 **A.** So this was a document that was, you know, used to make
12 sure questions were handled appropriately as part of the
13 earnings call and just to make sure that, you know, those
14 answering were not sort of tricked into answering the wrong
15 question or answering something that they shouldn't answer.

16 **Q.** How did this practice come about?

17 **A.** It came about after one of the earnings meetings where
18 there was a question asked, and Sushovan I think answered that
19 question incorrectly, and it led to a lot of questions relating
20 to a period of adjustment that we had done with regard to one
21 of the acquisitions, I believe Interwoven at the time. So this
22 was there to make sure that that wasn't repeated.

23 **Q.** Was this in 2009?

24 **A.** Yes.

25 **Q.** Please look at page 5. Excuse me. Page 6 of the exhibit.

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1 Up at the top, do you see where it says, "Q3/2009
2 conference call script"?

3 **A.** I do.

4 **Q.** What is this portion of the document?

5 **A.** So this was basically the script that was written for each
6 of the individuals speaking through the prepared remarks at the
7 start of the earnings presentation.

8 So AK is Andrew Kanter. RW is Rob Webb. MG is myself.
9 MRL is Mike Lynch. And there would also be SH, Sushovan
10 Hussain.

11 **Q.** Who had a hand in crafting the script for the analyst
12 calls?

13 **A.** I would have written part of the script, Pete Goodman
14 would have written part of the script.

15 **Q.** Would you please look at page 17 of the exhibit?

16 **A.** (Witness reviews document.)

17 **Q.** Do you see the heading "consensus summary table"?

18 **A.** I do, yes.

19 **Q.** What does that refer to?

20 **A.** So this was a table that took officially published
21 consensus from Bloomberg, so the third column as it was at the
22 end of the quarter. It also took a -- or basically showed the
23 company consensus, so this was the consensus that was compiled
24 by Financial Dynamics on behalf of Autonomy, and compared this
25 to the actual results in the quarter. So the first column are

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1 the actual results, how it compared to consensus. So in this
2 case revenue was better than expected but profitability was
3 clearly much worse.

4 There was also the following quarter consensus, so what
5 Bloomberg was saying for the -- the coming quarter, and then
6 what this was for the overall -- for the overall 12-month
7 period, in this case 2010.

8 Q. Why is this consensus summary table included in this deck?

9 A. We would have provided this to basically show where
10 results were versus consensus. As I mentioned before, you know
11 consensus is an important indicator to how the stock may react,
12 so this was providing the facts and figures there so everyone
13 could see them.

14 Q. Everyone, meaning all the participants from Autonomy on
15 the earnings call?

16 A. Yes. So this was an internal document, not for
17 distribution, and it was for, you know, Mike, Sushovan, Andy,
18 myself, Rob Webb in this case, to have so that we had all
19 available information.

20 Q. You mentioned someone named Rob Webb. Who was he?

21 A. Rob Webb was the executive chairman of Autonomy.

22 Q. What role is that?

23 A. So Rob was appointed to the board as initially
24 nonexecutive chairman and then as executive chairman. So he
25 was another board member with Sushovan and Mike Lynch.

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1 **Q.** Beneath the consensus summary table there are key
2 questions.

3 Do you see that?

4 **A.** I do.

5 **Q.** And do those key questions continue for a number of pages
6 up through page 28?

7 **A.** They do, yes.

8 **Q.** What are these?

9 **A.** So every quarter we basically took sort of questions that
10 either had been asked in prior quarters or potential questions
11 that we felt would be asked during the quarter, and then we
12 would put a response to this. So this was, you know, I'd say
13 best practice in terms of preparing for an earnings call,
14 making sure that we had assessed all the likely questions, you
15 know, positive and negative, and had responses to them.

16 **Q.** Would you please look at page 23 of the exhibit. And I
17 direct your attention to question 74.

18 Do you see that, Mr. Geall?

19 **A.** I do.

20 **Q.** Are these a series of questions relating to the Q3/2009
21 SPE launch?

22 **A.** They are, yes.

23 **Q.** Okay. What is question 74?

24 **A.** "SPE has launched now. Can you comment on partner and
25 Beta program feedback?"

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1 **Q.** And what was the proposed response?

2 **A.** "All feedback has been positive. You see from the main
3 slides that IBM, Accenture, Wipro, etc. are on board with the
4 Quick Start program."

5 **Q.** What did you understand that to mean?

6 **A.** The implication here is that partners of Autonomy, so
7 companies like IBM and Accenture, were aware of this and were
8 working to support partners that were undertaking the Quick
9 Start program and the beta program.

10 **Q.** Let me draw your attention to page 25.

11 Do you see the heading Moreland/Khan?

12 **A.** I do.

13 **Q.** What does that refer to?

14 **A.** Two analysts, Paul Moreland, he was at Astaire, and then
15 Arbuthnot, and then Daud Khan who was at JPMorgan.

16 **Q.** Why are these questions included in this document?

17 **A.** So Paul Moreland and Daud Khan had been sort of two
18 analysts that had been quite sort of the negative on Autonomy,
19 questioning the cash conversion and the growth in the business,
20 and these were the types of questions that they may have asked
21 at that presentation.

22 **Q.** In question 99, it says, "Why is Daud Khan not able to
23 attend these meetings?"

24 What does that refer to?

25 **A.** This refers to the fact that Daud Khan was not being

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1 invited to investor meetings or to the analyst meetings and was
2 asked to attend via conference call.

3 Q. Why was he not invited?

4 A. So he couldn't ask any questions.

5 Q. To the right it says, "FSA requirement."

6 What does that mean?

7 A. The response was that there was -- the FSA had asked for
8 him not to be invited to the meetings.

9 Q. Where did you get that information?

10 A. I don't remember.

11 Q. Beneath that there is a question 100: "Can you help us
12 understand why you have changed your revenue recognition policy
13 for hosted revenues?"

14 Do you see that?

15 A. I do.

16 Q. And the proposed answer is "We have not. We adhere to SOP
17 97-2."

18 Do you see that?

19 A. I do.

20 Q. What is "SOP 97-2"?

21 A. SOP 97-2 is a U.S. GAAP accounting policy for revenue
22 recognition for software companies.

23 Q. And why was that the answer to this particular -- proposed
24 answer to this particular question?

25 A. The feeling was that the U.S. accounting policies were or

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1 are more mature than they are in Europe under IFRS. And, you
2 know, SOP 97-2 is considered the gold standard in terms of
3 accounting, and by stating that Autonomy was auditing its
4 reports to the same standards as SOP 97-2 implied adherence to
5 that gold standard.

6 Q. Was that something you heard Mr. Hussain say on more than
7 one occasion?

8 A. It was, yes.

9 Q. Would you please look at what has been marked as Exhibit
10 428.

11 Do you recognize this?

12 A. I do.

13 Q. Is this a true and correct copy of Autonomy's annual
14 report and accounts for the year ended December 31, 2009?

15 A. I believe it to be so.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 428 received in evidence)

18 **BY MR. LEACH:**

19 Q. As a general matter, Mr. Geall, what is this document?
20 How is it used?

21 A. So for every publicly listed business in the UK, you need
22 to file a full set of reports and accounts at the end of the
23 year. This is a reflection of the performance of your business
24 for the last 12 months. It would be signed off by the board
25 members or certainly the CEO and CFO of the business. It would

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1 talk about the strategy of the business, the performance of the
2 business, but would also have detailed financial accounts, so
3 the P&L, the balance sheet, the cash flow, as well as all
4 associated notes for that.

5 **Q.** Please look at page 15 of the exhibit.

6 What is this portion of the annual report?

7 **A.** This is the financial review.

8 **Q.** What is the financial review?

9 **A.** So this is a summary of the important financial metrics
10 and financial movements and is a sort of a normally occurring
11 part of any financial report, and is signed off by the CFO.

12 **Q.** If we could please scroll down to the bottom portion of
13 the page.

14 Who signed this financial review on behalf of Autonomy on
15 February 22nd, 2010?

16 **A.** Sushovan Hussain, the CFO.

17 **Q.** Would you please now look at page 13.

18 Is this part of the substance of the financial review that
19 Mr. Hussain has signed for?

20 **A.** Yes, it is.

21 **Q.** I direct your attention to the left column. The second
22 bold heading at the top says "Cost of revenues."

23 Do you see that?

24 **A.** I do.

25 **Q.** What again are cost of revenues?

PROCEEDINGS

1 **A.** So this is effectively the cost of revenue, so the cost of
2 generating your license sales, your services and, you know, is
3 a comparison between the current year and the prior year.

4 **Q.** This says, "cost of revenues was up 95 percent from 45
5 million in 2008. The increase is driven by increased revenues,
6 together with a shift in the mix of revenues at the beginning
7 of 2009 as a result of the Interwoven acquisition and by the
8 IDOL SPE Quick Start program."

9 Do you see that?

10 **A.** I do.

11 **Q.** What did you understand that to mean?

12 **A.** So this is -- this is basically stating that the reason
13 why the cost of revenues nearly doubled, going up 95 percent,
14 was due to manufacturers. One was the acquisition of
15 Interwoven that would have generated additional cost of
16 revenues, because it was a larger combined business, and the
17 second was relating to the hardware revenues relating to the
18 IDOL SPE Quick Start program.

19 **Q.** What again was the IDOL SPE Quick Start program?

20 **A.** So this was the initiative to accelerate adoption by some
21 target customers of IDOL SPE.

22 **Q.** By doing what?

23 **A.** By sending or shipping some hardware with IDOL SPE on that
24 hardware and to a customer so they could use the product.

25 **Q.** In or around fourth quarter of 2009, did you attend a

PROCEEDINGS

1 investor conference hosted by Morgan Stanley in the Bay Area?

2 **A.** I believe I did, yes.

3 **Q.** Why did you go to that?

4 **A.** So Morgan Stanley is a big investment bank. Its
5 technology conference -- it has two, one in the U.S. and one in
6 the Europe. They are two of the most respected financial
7 conferences out there. Autonomy as a technology company was
8 invited, and it was usual for Autonomy to attend. Normally
9 Mike Lynch would attend. On this occasion I attended with
10 Sushovan.

11 **Q.** Did you have occasion to meet with some of the technology
12 folks from Morgan Stanley responsible for purchasing Autonomy
13 product?

14 **A.** I did, yeah.

15 **Q.** Who was at that meeting?

16 **A.** So this meeting was attended by myself, Sushovan, and
17 Stouffer Egan from Autonomy.

18 **Q.** What was the purpose of the meeting?

19 **A.** So this was a meeting at the end of a series of investor
20 meetings, so we met with a number of investors, and I think
21 this was probably the last or one of the last meetings. And as
22 is often is usual at these types of events, you meet with the
23 investment bankers, they say, as an opportunity to meet with
24 management. So the investment banking team of Morgan Stanley
25 sort of came in to have a meeting with Sushovan and Stouffer.

PROCEEDINGS

1 **Q.** What do you mean the investment bankers view this as an
2 opportunity? What did you mean by that?

3 **A.** I mean investment banking is a relationship-driven
4 business. They don't always get to meet with CEOs and CFOs, so
5 they always use a tech conference as a way of locking down
6 management and getting a meeting.

7 **Q.** And do you recall anybody from Morgan Stanley making a
8 comment about some of Autonomy's transactions with Morgan
9 Stanley?

10 **A.** So there were some discussions in the meeting as to
11 whether, you know, Morgan Stanley would -- would do any deals
12 or would buy any software from Autonomy in that quarter, and
13 the comment was made -- I don't remember exactly by who -- at
14 Morgan Stanley.

15 **MS. LITTLE:** Objection, foundation. He doesn't
16 remember.

17 **THE COURT:** I couldn't hear it.

18 **MR. LEACH:** I think Mr. Geall has said he doesn't
19 remember who made the comment, but he remembers somebody from
20 Morgan Stanley making the comment, that it was at a meeting
21 with Sushovan Hussain. And I'm offering it for the effect on
22 the listener.

23 **THE COURT:** Overruled.

24 **THE WITNESS:** As part of the discussion, the question
25 was asked whether, you know, there would be an opportunity to

PROCEEDINGS

1 do any deals, to buy any software in the quarter, and the
2 comment was made that, you know, basically Morgan Stanley was a
3 little bored of buying out Autonomy at the end of each quarter.

4 **BY MR. LEACH:**

5 Q. I'm sorry. I didn't hear that last part. A little tired
6 of --

7 A. A bit tired of doing end-of-quarter deals to help them
8 make their numbers.

9 Q. What was your reaction to that?

10 A. I mean, a little surprised, but, you know, it was not
11 totally usual.

12 Q. Let me move forward in time, Mr. Geall, to the first
13 quarter of 2010.

14 I would like you to please look at what has been marked as
15 Exhibit 2771.

16 A. I don't think I have it.

17 Q. Do you recognize this?

18 A. I don't have it. I don't have 2771.

19 Q. Oh.

20 (Mr. Leach hands Mr. Geall the document.)

21 **BY MR. LEACH:**

22 Q. Do you recognize this document, Mr. Geall?

23 A. I do.

24 Q. What is this?

25 A. So this is an early version of the PowerPoint presentation

PROCEEDINGS

1 that we would use to present the Q4/2009 and full year results
2 for 2009 to investors.

3 **THE COURT:** Admitted.

4 (Trial Exhibit 2771 received in evidence)

5 **BY MR. LEACH:**

6 **Q.** Let me draw your attention to the top portion of the
7 email, Mr. Geall. I think we've seen most of these names
8 before, but there is someone named Jennifer Alves from fd.com.
9 Who is she?

10 **A.** Jennifer was or is one of Ed Bridges' team, so she was
11 familiar with the Autonomy account.

12 **Q.** Let me please draw your attention to page 11.

13 Do you see at the top the heading "IDOL SPE Q4/09
14 exceeding plan"?

15 **A.** I do.

16 **Q.** What did that mean?

17 **A.** That as of Q4, IDOL SPE, in terms of initial uptake, was
18 ahead of expectations.

19 **Q.** In the first bullet, there is that reference to Quick
20 Start program. Is this part of the information that caused you
21 to associate Quick Start with SPE?

22 **A.** Yes.

23 **Q.** Where did you get that information?

24 **A.** Through discussions with Sushovan and Mike.

25 **Q.** Further down there is a bullet that says, "key

PROCEEDINGS

1 differentiator in a 12 million deal."

2 Do you see that?

3 A. I do.

4 Q. What does that mean?

5 A. This was basically stating that there was a large deal for
6 \$12 million in the quarter, and that the inclusion of IDOL SPE
7 in that deal was a differentiator and a reason why the deal was
8 won.

9 Q. Why was that included in this investor presentation for
10 the fourth quarter of 2009?

11 A. At the time revenues were still small. As you can see in
12 the subsequent bullet, total SPE revenue was approximately one
13 million, so still not meaningful to the business, but this was
14 showing that it was actually potentially important
15 differentiator to accelerate growth by allowing bigger deals to
16 close.

17 Q. How is this PowerPoint used?

18 A. This PowerPoint is initially used as part of the investor
19 meeting or investor call, but then would be used as part of the
20 investor road shows that we would undertake to communicate the
21 results with a broader audience.

22 Q. Please look at what has been marked as Exhibit 588.

23 A. 588?

24 Q. 588, please.

25 A. I don't think I have it.

PROCEEDINGS

1 (Mr. Leach hands Mr. Geall a document.)

2 **THE WITNESS:** Thank you.

3 **BY MR. LEACH:**

4 **Q.** Do you recognize this document?

5 **MS. LITTLE:** Objection, Your Honor. I think this one
6 is also missing the last page.

7 **THE COURT:** Does 590 have it?

8 **MS. LITTLE:** 588.

9 **THE COURT:** Pardon?

10 **MS. LITTLE:** 588?

11 **THE COURT:** Yes. But what about 590? No. They're
12 the same.

13 **MR. LEACH:** I think they're the same from different
14 sources, Your Honor. I'm pleased to use 590 if there is no
15 objection.

16 **MS. LITTLE:** I think it's also missing the last page.

17 **THE COURT:** Well, ladies and gentlemen, maybe we could
18 take a little recess now.

19 So remember the admonition given to you. Don't discuss
20 the case, allow anyone to discuss it with you. We will resume
21 at 2:15.

22 (Proceedings were heard out of presence of the jury:)

23 **THE COURT:** Can we work this out? Does the last page
24 make a difference?

25 **MS. LITTLE:** I will double check. I think it may be

PROCEEDINGS

1 || missing a last page, but I'll double check.

2 **MR. LEACH:** We will work it out, Your Honor. This
3 won't be controversial.

4 **MS. LITTLE:** I will say if it is missing a last page,
5 I'm fine with him taking the witness through it, and we can
6 substitute a page later.

7 || (Recess taken at 1:59 p.m.)

8 || (Proceedings resumed at 2:19 p.m.)

9 (Proceedings were heard in the presence of the jury.)

10 **THE COURT:** Let the record reflect all jurors are
11 present, parties are present.

12 You may proceed.

13 MR. LEACH: Thank you, Your Honor.

14 I understand the objection to Exhibit 588 has been
15 withdrawn.

16 THE COURT: 588 admitted.

17 (Trial Exhibit 588 received in evidence)

18 | BY MR. LEACH:

19 Q. Do you recognize this, Mr. Geall?

20 || A. I do.

21 || Q. What is this?

22 A. This is the report document for the fourth quarter of
23 2009.

24 Q. And is this a document you had a hand in preparing as the
25 head of investor relations?

PROCEEDINGS

1 **A.** I would have had some contribution, but the majority of
2 the work would have been done -- sorry -- by Sushovan and Steve
3 Chamberlain and others.

4 **Q.** Thank you. You can put that to the side, and please look
5 at what has been marked as Exhibit 2772.

6 **A.** Sorry. 2772?

7 **Q.** Yes, please. Is this a true and correct copy of an email
8 that you received from Mike Lynch in or around February of
9 2010?

10 **A.** I believe it to be, yes.

11 **Q.** Is Sushovan Hussain one of the recipients?

12 **A.** He is, yes.

13 **THE COURT:** Admitted.

14 (Trial Exhibit 2772 received in evidence)

15 **BY MR. LEACH:**

16 **Q.** Up at the top, Mr. Geall, there is a reference to Astaire
17 note. What does that mean?

18 **A.** So this had been -- Paul Moreland, the analyst at Astaire,
19 had written a brief note relating to an acquisition that
20 Autonomy had done, and this had then been forwarded by Ed
21 Bridges to the Autonomy team.

22 **Q.** What was the acquisition that Mr. Moreland was commenting
23 on?

24 **A.** The acquisition of a business with MicroLink.

25 **Q.** What was MicroLink?

PROCEEDINGS

1 **A.** MicroLink was a U.S. federal reseller that resold Autonomy
2 product and Microsoft product.

3 **Q.** When did Autonomy acquire MicroLink?

4 **A.** I don't know the specific date.

5 **Q.** Was it at some point in 2010? Or around the time of this
6 email?

7 **MS. LITTLE:** Objection, leading.

8 **THE COURT:** Overruled. We'd be here for six months.

9 **THE WITNESS:** I do not remember if it was late 2009 or
10 early 2010, but it was around that time.

11 **BY MR. LEACH:**

12 **Q.** Okay. Let me draw your attention to page 2 of the
13 exhibit. And I draw your attention to the line that says the
14 acquisition will cost 55M.

15 Do you see that?

16 **A.** I do.

17 **Q.** Is that roughly the amount of the MicroLink acquisition?

18 **A.** I believe it to be, yes.

19 **Q.** And what was the thrust -- what did you understand the
20 thrust of the questions relating about MicroLink to be here?

21 **A.** So the thrust of the note is questioning why Autonomy
22 would buy MicroLink; that it didn't appear to be a strategic
23 asset so why spend the cash. And then sort of begging the
24 question that it would just raise additional investor concerns
25 around cash generation and cash conversion for the business.

PROCEEDINGS

1 **Q.** Are you familiar with the term "channel partner"?

2 **A.** I am.

3 **Q.** What is a channel partner?

4 **A.** A channel partner is a third-party business that you --
5 that takes a company's software to market. So effectively a
6 reseller, reselling your product into the market.

7 **Q.** Did you consider MicroLink to be a channel partner of
8 Autonomy's?

9 **A.** I did, yes.

10 **Q.** And what is it about acquiring a channel partner that
11 raises questions in your mind?

12 **A.** Well, I mean, channel partners are about giving you scale.
13 They give you access and reach to markets that you wouldn't
14 necessarily have access to. So you already have a relationship
15 with them, so why acquire them? There is no need to.

16 **Q.** Please look at what has been marked as Exhibit 2773.

17 Is this a true and correct copy of an email from Mike
18 Lynch to you, Sushovan Hussain, and others on or about March
19 1st, 2010?

20 **A.** I believe it to be, yes.

21 **THE COURT:** Admitted.

22 (Trial Exhibit 2773 received in evidence)

23 **BY MR. LEACH:**

24 **Q.** Let me please draw your attention to the bottom portion of
25 the first page, Mr. Geall. There is an email from someone

PROCEEDINGS

1 named Michael Briest at ubs.com. Who is he?

2 **A.** Michael Briest is the lead analyst for laying software and
3 IT services companies at UBS.

4 **Q.** He is someone you had an interaction with as the head of
5 IR?

6 **A.** He was, yes.

7 **Q.** Please look at page 2. If you could take a moment,
8 please, to read the first starred portion at the top beginning
9 "could you just confirm?"

10 **A.** "Could you just confirm to me that you only recognize
11 sales on sell-through, not sell-in at MicroLink and other
12 resellers. It says in the reports and accounts that sales are
13 generally recognized if all products subject to resale are
14 delivered in the current period. No right of return policy
15 exists. Collection is probable, and the fee is fixed and
16 determinable. I want to head off any concern that MicroLink
17 bought IDOL licenses in Q4 pre-acquisition, and you booked a
18 sale on them in Q4 even if they have not been delivered to the
19 final customer since. I think it might be worth considering
20 putting this up on the question board."

21 **Q.** What is sell-through in that first line?

22 **A.** So this is -- this is effectively the timing of when you
23 recognize revenues through a channel partner.

24 So the normal expectation for companies is that you
25 recognize the revenue once they've sold to the end customer,

PROCEEDINGS

1 not when you have sold to the channel partner.

2 The reason being the risk of recognizing revenues too
3 early.

4 Q. Mr. Briest goes on to write:

5 "I want to head off any concern that MicroLink bought
6 IDOL licenses in Q4 pre-acquisition, and you booked a sale
7 on them in Q4, even if they have not been delivered to a
8 final customer."

9 What did you understand Mr. Briest to be getting at there?

10 A. So this relates to timing of any revenues that Autonomy
11 may have received from MicroLink, and whether they had been
12 recognized prior to the acquisition.

13 Once you acquire a business, you have the ability to
14 effectively write down any of its debts. Potentially, you
15 know, if -- if Autonomy had recognized revenues that hadn't
16 been sold through to the end customer, then there would have
17 been the opportunity to write down that debt and not restate
18 revenues.

19 Q. Why is that a concern?

20 A. It's -- it would be a concern if -- if the business hadn't
21 really sold to an end customer prior to the acquisition.

22 Q. Why?

23 A. It would imply channel stuffing.

24 Q. What was the response that you proposed to Mr. Briest's
25 question?

PROCEEDINGS

1 **A.** That there were no Q4 revenues from MicroLink.

2 **Q.** Why did you write that?

3 **A.** Because that was the information I'd been told.

4 **Q.** By whom?

5 **A.** I do not remember.

6 **Q.** If we could go to the first page of the email, please.

7 Before I ask my question about this, you used the word
8 "channel stuffing." What is that?

9 **A.** Channel stuffing is recognizing revenues before the
10 customer or the end customer has received the product.

11 **Q.** Why is -- why is that an issue?

12 **A.** Because there's a risk that the customer never pays for
13 the product, and you never actually receive the revenues.

14 **Q.** What does that mean for a company like Autonomy?

15 **A.** It would effectively inflate revenues in the short term,
16 and then once those debts were written off, there would be a
17 reversal in the future.

18 **Q.** We have here Mike Lynch writing to you, "please check with
19 dish."

20 What do you think that means?

21 **A.** I believe that was a typo by Mike. I think that means
22 please check with Sush, which is how Mike chose to call
23 Sushovan.

24 **Q.** And what's the remaining portion of his email?

25 **A.** "Be sure he puts no more than 2 million revenue Q1 for

PROCEEDINGS

1 MicroLink."

2 Q. Please look at what has been marked as Exhibit 2774.

3 Is this a true and correct copy of an email that you
4 received from Peter Goodman to Sushovan Hussain on or about
5 March 10, 2010?

6 A. I believe it to be, yes.

7 **THE COURT:** Admitted.

8 (Trial Exhibit 2774 received in evidence)

9 **BY MR. LEACH:**

10 Q. Let me draw your attention to the first top portion of the
11 email.

12 Mr. Goodman is somebody who worked for you, Mr. Geall, in
13 or around this time?

14 A. Correct.

15 Q. And he's writing:

16 "Hi Sushovan, please can you approve the following
17 questions to go up on the website?"

18 What did you understand that to mean?

19 A. This was the approval that we would normally have sought
20 from either Mike or Sushovan before posting any new questions
21 onto the investor bulletin board.

22 Q. Please look at page 2. And I direct your attention to the
23 middle of the page.

24 Do you see the question "Did Autonomy make any sales to
25 MicroLink in Q4/09?"

PROCEEDINGS

1 **A.** I do.

2 **Q.** Was that Mr. Briest's question?

3 **A.** It was, yes.

4 **Q.** Does this represent Mr. Goodman seeking Mr. Hussain's
5 approval to put the answer "no, there were no Q4/09 revenues
6 from MicroLink onto the website"?

7 **A.** Correct.

8 **Q.** In or around the first quarter of 2009, did you meet with
9 investment bankers from JPMC relating to analyst coverage of
10 Autonomy?

11 **A.** Can you clarify the time? You said Q1/2009?

12 **Q.** Q1/2010, March of 2010, did you meet with investment
13 bankers at JPMC relating to JPMC's analyst coverage of
14 Autonomy?

15 **A.** Correct.

16 **Q.** Who attended that meeting?

17 **A.** This was attended by Sushovan, Mike, myself, Andrew
18 Kanter. I don't believe anybody else from Autonomy, but maybe
19 Rob Webb was there, but I don't fully recall, and I believe
20 four or five people from JPMorgan.

21 **Q.** Who from JPMorgan, what portion of the company?

22 **A.** So it was a mixture, so it was some of the investment
23 bankers at JPMorgan, as well as the head of accounting research
24 at JPMorgan.

25 **Q.** What was the subject matter of the meeting?

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1 **A.** The subject matter was for Autonomy effectively to present
2 to the head of accounting at JPMorgan how Autonomy was
3 recognizing revenues, how it was constructing its report and
4 accounts to give confidence to him that some of the negative
5 research that Daud Khan was writing was misguided and not based
6 on fact.

7 **Q.** Why were the investment bankers included in this meeting
8 about analyst coverage?

9 **A.** This was a meeting that was basically sponsored by the
10 investment bankers.

11 **Q.** But why the investment bankers if it relates to analyst
12 coverage?

13 **A.** The investment bankers were keen to do business with
14 Autonomy. They wanted to be an adviser to Autonomy, which
15 would have been very difficult to do with a negative analyst
16 covering the stock.

17 **Q.** We talked earlier about Catalyst. Do you recall that
18 testimony?

19 **A.** I do.

20 **Q.** Was the thrust of your meetings with Catalyst the
21 possibility that Catalyst would represent Autonomy in some form
22 of acquisition?

23 **A.** The -- the presentations that Catalyst presented to Mike
24 and myself were showing potential acquisitions for Autonomy, so
25 they wanted to advise Autonomy on potential acquisitions, but

PROCEEDINGS

1 also sort of discussing if Autonomy needed some kind of
2 defense. If it was acquired itself, then they would also be
3 happy to provide that service to the company.

4 Q. In or around March of 2010, did you decide to leave
5 Autonomy?

6 A. I did, yes.

7 Q. And did you notify Dr. Lynch about your desire to leave
8 Autonomy?

9 A. I did, yes.

10 Q. Why did you want to leave Autonomy?

11 A. When I had initially taken the role in investor relations,
12 I specified to Mike that that wasn't the role I wanted to do.
13 I went to Autonomy to be the CEO of Virage. I had not wanted
14 to do IR at any company. It wasn't a role I wanted to do. So
15 at that time I stated, you know, if a better opportunity became
16 available, then I would take that.

17 In late sort of 2009 and early 2010, I was in discussions
18 with Deutsche Bank, and Deutsche Bank made me an offer that was
19 of interest. Ms. Rohrbach is a financial analyst covering the
20 tech base.

21 I also had become uncomfortable in terms of, you know,
22 where Autonomy was and some of the questions that we've
23 obviously discussed today.

24 Q. What do you mean by that?

25 A. Just that, you know, my fear was that, you know, the

PROCEEDINGS

1 growth wasn't what it was purported to be, that, you know, the
2 use of acquisitions was being used to accelerate the organic
3 growth rate for the business. And, you know, I didn't feel
4 overly comfortable continuing to have discussions with
5 investors that I had known for many years about things that I
6 was starting to question.

7 **Q.** What were the things you were starting to question?

8 **A.** So, I mean, there were, I suppose, a number of areas.

9 First, as I mentioned, how M&A or acquisitions were being
10 used to accelerate growth for the business.

11 The second one was relating to the OEM business and the
12 real size of the OEM business. My understanding had become
13 that it was significantly less than what was being presented in
14 the reports and accounts and communicated to investors.

15 IDOL SPE in terms of, you know, the launch of a new
16 product that was going to drive incremental growth, but was it
17 really a product; as well as questions over, you know, the
18 hardware sales that may have occurred in Q3/2009 relating to
19 EMC, and whether that was being used to sort of -- or whether
20 IDOL SPE was being used to hide that fact.

21 **Q.** You testified, Mr. Geall, that you were uncomfortable that
22 hardware sales were being -- SPE was being used to mask
23 hardware sales. Is that fair?

24 **A.** That was the conclusion I was coming to, yes.

25 **Q.** What do you mean by that?

PROCEEDINGS

1 **A.** Well, there was -- if you -- if you are recognizing the
2 revenues at a loss, then there is a lot of cost that needs to
3 be accounted for. You know, if this was the general course of
4 business and it was cost of goods sold, then that all would
5 have gone into the COGS line, which clearly it wasn't.

6 Over this period as well there was the launch of a new
7 product, Arcpliance, that was also, you know, leading to
8 hardware becoming an increasing part of the business, but it
9 was difficult to explain in terms of the potential margin risk
10 and margin contribution that was there.

11 **Q.** How did that relate to the SPE launch?

12 **A.** So with IDOL SPE, it comes back to the fact that, you
13 know, it wasn't clear to me that the R&D was being done on a
14 new product, because this was a product or capabilities in the
15 product that already existed, as well as no sort of evidence
16 around the sales and marketing costs relating to the Quick
17 Start program. And those combined costs were, you know, very
18 similar to the purported sort of hardware -- sale or hardware
19 deal with EMC.

20 **Q.** You also mentioned a concern about OEM. What did you mean
21 by that?

22 **A.** So OEM was a very important part of the equity story.
23 This was the sort of ability to take IDOL and have basically
24 another software company embed IDOL into their technology and
25 go to market, so it gives you a huge scale into the market

PROCEEDINGS

1 because you're leveraging those companies' channels to sell.
2 This is a super high margin business. The reason why Autonomy
3 had the high gross margin was the benefit of OEM, which should
4 have generated new revenues at minimal incremental sales and
5 marketing costs, because you're getting a royalty back from the
6 software vendor that is licensing your technology and selling
7 it.

8 I was pretty close to the individual at Autonomy that was
9 running the OEM business, somebody called Harold Collette.
10 And, you know, he had -- he had come to me because he had had
11 some questions around the OEM business and had to attend a
12 meeting in New York with Mike Lynch to discuss the OEM
13 business, and he was feeling increasingly uncomfortable with
14 that, so he was explaining to me what was really happening, and
15 it was indicating that the OEM business was, you know, a
16 fraction of the revenues that were being reported.

17 **Q.** You also described something called accelerated growth
18 through acquisition. What did you mean by that?

19 **A.** So Autonomy, because of this ability to OEM IDOL and
20 quickly integrate it into other technologies, when Autonomy
21 made an acquisition like Interwoven, what Autonomy did was very
22 quickly integrate IDOL into the acquired company's products.
23 The rationale being that now if new deals of that product were
24 being sold to customers, that was done by -- that was driven
25 because of IDOL, not because of the legacy technology that had

PROCEEDINGS

1 been acquired, and, as such, Autonomy, I think, was able to
2 convince its auditors that this was now organic growth and not
3 acquired growth.

4 **Q.** Prior to leaving Autonomy, did you continue to interact
5 with investors relating to the announcement of the Q1/2010
6 results?

7 **A.** Sorry. Can you repeat the question.

8 **Q.** Prior to actually leaving Autonomy, did you continue to do
9 work around the first quarter of 2010 results announced to the
10 market?

11 **A.** I did, yes.

12 **Q.** Please look at what has been marked as Exhibit 2776.

13 Is this a true and correct copy of an email that you sent
14 to investors relating to Autonomy on or around April 22nd,
15 2010?

16 **A.** It is, yes.

17 **THE COURT:** Admitted.

18 (Trial Exhibit 2776 received in evidence)

19 **BY MR. LEACH:**

20 **Q.** This email exchange is with someone named Hari Ramanan.
21 Do you see that?

22 **A.** I do.

23 **Q.** Who is this individual?

24 **A.** Hari was a firm manager at a hedge fund called Eminence
25 Capital.

PROCEEDINGS

1 **Q.** And the question you receive is:

2 "Mark, just trying to make sense of this. In Q1, the
3 company took advantage of discounted offers to purchase
4 stock for the Arcpliance product in advance of Q2 sales
5 which affected the cash position. How could this move the
6 needle on the cash position?"

7 What did you understand the thrust of this question to be?

8 **A.** So this related to a comment that had been made relating
9 to the Q1 results where basically there were inventory or there
10 was inventory on the balance sheets that had been -- sorry --
11 inventory on the balance sheets that was explained as hardware
12 that had been purchased ahead of an opportunity to sell a new
13 product called Arcpliance in the subsequent quarter. So rather
14 than this being recognized as revenues, it was sitting
15 effectively on the balance sheets as inventory, potentially
16 depreciating. So this was a comment to explain what had
17 happened and why.

18 **Q.** What is Arcpliance?

19 **A.** Arcpliance was basically an appliance. So an appliance is
20 a piece of hardware that has software on it, the benefit being
21 speed of deployment into a data center. So Arcpliance was a
22 derivative of some software that Autonomy had for eDiscovery.
23 EDiscovery is the need to process digital information as part
24 of legal cases, which had been an important growth driver for
25 Autonomy. Arcpliance was a way of speeding the deployment of

PROCEEDINGS

1 that into a customer data center by basically dropping the
2 appliance into the data center.

3 **Q.** And you mentioned something about inventory. What is
4 inventory?

5 **A.** Inventory is a cash flow or balance sheet term that
6 relates to, you know, product that is effectively sitting
7 there; it could be in a warehouse that either you have
8 manufactured and are about to sell or, you know, are going to
9 resell into the market.

10 **Q.** And so there was some inventory on Autonomy's balance
11 sheet at the end of Q1/2010?

12 **A.** I believe that to be the case, yes.

13 **Q.** Was that usual?

14 **A.** No, it was not -- well, it was usual to have some level of
15 inventory, normally 2-or 300,000Ks worth of inventory, but at
16 this time I believe the number was closer to 10 million. That
17 was unusual.

18 **Q.** What was the explanation you gave to investors about this
19 \$10 million in inventory?

20 **A.** So similar to what was communicated here to Hari, that,
21 you know, this related to Arcpliance, which was a, you know,
22 product that Autonomy was selling or would be selling in 2010
23 to continue to deliver growth around eDiscovery, but it would
24 be, you know, a relatively small number of deals, because it
25 wasn't, you know, a core focus going forward.

PROCEEDINGS

1 **Q.** What was the significance of attaching this to Arcpliance
2 or an appliance?

3 **A.** The significance to investors was that the gross margin
4 would be lower than what was normal for Autonomy. So, you
5 know, if we used the example of Autonomy generating a gross
6 margin of about 90 percent, if you have ten million of
7 inventory for that to be non-dilutive and to the gross margin,
8 you need to probably be generating at least 80 million of
9 software just for that 10 million of hardware; otherwise you
10 would be diluting the margins.

11 80 million in a quarter was, you know, a significant
12 amount of Autonomy's license revenue in the quarter. So it
13 was, you know -- it would have become a very risky business,
14 because you would have been dependent on a relatively small
15 number of very large deals that may or may not close.

16 **Q.** You wrote here:

17 "10M of stock bought in Q1 ahead of Arcpliance deals
18 that have closed in early Q2. Should not expect this type
19 of run rate in the future."

20 Where did you get that information?

21 **A.** Discussions with Sushovan.

22 **Q.** And help me understand what you meant by this.

23 **A.** So because the 10 million of stock was a relatively high
24 number, hardware tends to depreciate very quickly; right? It's
25 not normal to buy hardware ahead of time, because its value in

PROCEEDINGS

1 a month or two months is significantly lower.

2 So here what was being communicated was that deals were
3 ready to be closed. So that stock or that inventory sat on the
4 balance sheet, and there was minimal risk to Autonomy, because
5 the customer was just going through its procurement process,
6 and it would be quickly deployed and then the revenue
7 recognized in the subsequent quarter.

8 Q. And were you saying the stock would be part of an
9 appliance?

10 A. Here, yes. The -- the commentary is that the stock is
11 hardware that would be used as part of the Arcpliance solution.

12 Q. Why did you emphasize that?

13 A. Because hardware was unusual. As you see from the comment
14 from Hari, we thought hardware sales wasn't big, otherwise
15 being the communication from the management team at Autonomy,
16 but now this was a pretty material number of 10 million in the
17 quarter.

18 Q. After you left Autonomy, where did you go?

19 A. I went to Deutsche Bank.

20 Q. What is Deutsche Bank?

21 A. Deutsche Bank is a European investment bank.

22 Q. What did you do for Deutsche Bank?

23 A. I was their research analyst in charge of software and IT
24 services companies.

25 Q. You went back to doing the work much like what you had

PROCEEDINGS

1 done before joining Autonomy?

2 **A.** Correct.

3 **Q.** You recognize what is marked as Exhibit 994?

4 **A.** I don't have 994.

5 **Q.** Forgive me. 996. Do you recognize this document?

6 **A.** I do, yes.

7 **Q.** What is it?

8 **A.** It is a research report published by Deutsche Bank for the
9 second quarter of 2010.

10 **MR. LEACH:** Your Honor, I offer Exhibit 996.

11 **THE COURT:** Admitted.

12 (Trial Exhibit 996 received in evidence)

13 **BY MR. LEACH:**

14 **Q.** So when you went to Deutsche Bank you resumed covering
15 Autonomy from the outside, Mr. Geall?

16 **A.** Ultimately I did, yes.

17 **Q.** Okay. Do you see your name listed as research analyst
18 just below the heading "weak 2Q yet fundamental investment case
19 remains"?

20 **A.** I do, yes.

21 **Q.** To the left there is someone named Josep Bori.

22 Who is he?

23 **A.** Josep was the analyst who had been the number two on the
24 team.

25 Prior to my joining, when the lead analyst had left

PROCEEDINGS

1 Deutsche Bank, all stocks under coverage were transferred over
2 to Josep, so he was the main name on the stock, which is why
3 his name is here to the left. Although I had started at
4 Deutsche Bank, I had not assumed coverage of any of the stocks
5 at that point.

6 Q. Did you review this report before it was issued?

7 A. I did, yes.

8 Q. And you had some contribution to it, but not as much as
9 Mr. Bori; is that fair?

10 A. It was technically his report, yes.

11 Q. At what point in time did you first issue a report in your
12 own name relating to Autonomy?

13 A. So I would have resumed coverage after the Q2 earnings
14 season, because we had 12 companies to get through, and I
15 published a much larger piece of research in October 2010.

16 Q. Before we get to that, would you please look at what has
17 been marked as Exhibit 1128.

18 Is this a true and correct copy of a press release issued
19 by Autonomy on or about October 6, 2010?

20 **MS. LITTLE:** Objection, Your Honor. I think he was
21 gone from the company then.

22 **MR. LEACH:** He is covering Autonomy, Your Honor.

23 **THE COURT:** Well, you have to lay a foundation that he
24 saw it.

25

PROCEEDINGS

1 **BY MR. LEACH:**

2 **Q.** Do you recall this press release, Mr. Geall?

3 **A.** I do, yes.

4 **Q.** Were you covering Autonomy around this date?

5 **A.** I was, yes.

6 **THE COURT:** Admitted.

7 (Trial Exhibit 1128 received in evidence)

8 **BY MR. LEACH:**

9 **Q.** I draw your attention to the heading, Mr. Geall:

10 "Autonomy expects to report Q3/2010 results around
11 top end of model range; PBT expected to be up
12 approximately 35 percent."

13 What is PBT?

14 **A.** PBT stands for profit before tax.

15 **Q.** And does this press release also include lowering guidance
16 for the fourth quarter of 2010 for Autonomy?

17 **A.** Yes, it does.

18 **Q.** Where is that?

19 **A.** "There are unique challenges to the summer months with a
20 consequence September catch-up, but we are also noticing
21 customers still showing volatility around their view of the
22 current macroeconomic situation. This necessitates a prudent
23 approach to forecasting, and thus we expect to review our
24 internal model for the full year with a revenue reduction of
25 around 3 percent."

PROCEEDINGS

1 **Q.** Is this good news or bad news for a company?

2 **A.** This would be bad news.

3 **Q.** Why is that?

4 **A.** It's effectively a downgrading in expectations which
5 normally leads to a reduction in the share price.

6 **Q.** What do you mean by a downgrading of expectations?

7 **A.** So the management will either explicitly or implicitly,
8 you know, give an indication of the type of growth that they
9 expect to see, either in a current quarter or for the full
10 year.

11 Here, this term, our internal model for the full year was
12 the indication of the growth expectation that Autonomy had, and
13 by reducing that expectation it was effectively a downgrade in
14 forecasts.

15 **Q.** Please look at what has been marked as Exhibit 1154.

16 Do you recognize this document?

17 **A.** I do.

18 **Q.** Is this a true and correct copy of a report that you
19 issued on Deutsche Bank's behalf on or about October 10, 2010,
20 relating to Autonomy?

21 **A.** I believe it to be.

22 **THE COURT:** Admitted.

23 (Trial Exhibit 1154 received in evidence)

24 **BY MR. LEACH:**

25 **Q.** I draw your attention, Mr. Geall, to the top portion of

PROCEEDINGS

1 your report in the right where it says "recommendation change
2 hold."

3 Do you see that?

4 **A.** I do.

5 **Q.** And beneath -- in the heading, does it say, "The billion
6 dollar question, downgrading to a hold."

7 Do you see that?

8 **A.** It does.

9 **Q.** What does that mean?

10 **A.** So the prior analyst, Josep Bori, had been a buyer of the
11 stock, so the recommendation was a buy.

12 Here, I was publishing a detailed report and downgrading
13 it from a buy to a hold.

14 **Q.** What do you mean by a downgrade? I guess what do you mean
15 by buy and hold?

16 **A.** So as a financial analyst, you will have one of three
17 recommendations on any stock: Buy, hold or sell. If you're a
18 buyer, then you are recommending the investors should buy that
19 stock. If you are a holder, you are recommending that they
20 effectively reduce their exposure or reduce their wait to that.
21 So if you are moving from a buy to a hold, you are taking a
22 more cautious stance. And if you are a seller of the stock,
23 then you are basically saying, look, you should be short this
24 stock. You don't want to earn it. You should be short it.
25 And that's a very negative position to be on a stock.

PROCEEDINGS

1 **Q.** At the time that you issued this report, what was your
2 expectation about how this would be perceived by your former
3 colleagues at Autonomy?

4 **A.** I was not expecting them to be happy.

5 **Q.** Why was that?

6 **A.** For any analyst to downgrade a stock, you know, normally
7 will have some negative impact or implication. For an analyst
8 who was well-known and well regarded in the industry who had
9 also been part of the management team at that company to
10 downgrade was, you know -- would be viewed probably even more
11 cautiously.

12 **Q.** You used the term "short the stock." What do you mean by
13 that?

14 **A.** So within -- within the finance industry, you have the
15 ability to effectively short equities or short other vehicles,
16 so this is -- if you believe that the -- in this case, the
17 share price of a -- of a stock like Autonomy -- if you expect
18 it to be lower in the future, you basically effectively forward
19 sell it now, knowing that you can buy it back in the future at
20 a lower cost, therefore making money.

21 So many hedge funds use this as a way of taking a neutral
22 position in a particular market, so you could buy one stock and
23 you short another stock against it, so you would then have
24 limited exposure to that particular asset class or that
25 particular asset type.

PROCEEDINGS

1 **Q.** After issuing this downgrade to a hold report in October
2 of 2010, did you continue to cover Autonomy up through the
3 acquisition of Autonomy by HP?

4 **A.** I did, yes.

5 **Q.** I've placed before you, Mr. Geall, a number of exhibits
6 I'd like to go through relatively quickly.

7 Do you recognize what has been marked as Exhibit 165?

8 **A.** (Witness reviews document.)

9 I do, yes.

10 **Q.** Is this a true and correct copy of an earnings release
11 issued by Autonomy for the second quarter of 2009?

12 **A.** I believe it to be, yes.

13 **Q.** Please look at Exhibit 588.

14 **THE CLERK:** Is that admitted?

15 **MR. LEACH:** It's admitted. Excuse me.

16 **THE COURT:** 165, admitted.

17 (Trial Exhibit 165 received in evidence)

18 **BY MR. LEACH:**

19 **Q.** Please look at Exhibit 661.

20 Is this a true and correct copy of an earnings release by
21 Autonomy for the first quarter of 2010?

22 **A.** I believe it to be, yes.

23 **THE COURT:** 661, admitted.

24 (Trial Exhibit 661 received in evidence)

25

PROCEEDINGS

1 **BY MR. LEACH:**

2 **Q.** Do you recognize Exhibit 994 as a true and correct copy of
3 an earnings release by Autonomy for the second quarter of 2010?

4 **A.** Sorry. 994?

5 **Q.** Yes.

6 **A.** 994. Yes, it is.

7 **THE COURT:** Admitted.

8 (Trial Exhibit 994 received in evidence)

9 **BY MR. LEACH:**

10 **Q.** Do you recognize Exhibit 1186 as an earnings release by
11 Autonomy for the third quarter of 2010?

12 **A.** I do, yes.

13 **THE COURT:** Admitted.

14 (Trial Exhibit 1186 received in evidence)

15 **BY MR. LEACH:**

16 **Q.** Do you recognize 1531 as an earnings release by Autonomy
17 for the fourth quarter of 2010?

18 **A.** I do, yes.

19 **THE COURT:** Admitted.

20 (Trial Exhibit 1531 received in evidence)

21 **BY MR. LEACH:**

22 **Q.** Do you recognize 1788 as a press release for the first
23 quarter of 2011 by Autonomy?

24 **A.** I do, yes.

25 **THE COURT:** Admitted.

PROCEEDINGS

(Trial Exhibit 1788 received in evidence)

BY MR. LEACH:

Q. And finally, is 2023 a true and correct copy of a press release issued by Autonomy announcing results for the second quarter of 2011?

A. It appears to be, yes.

THE COURT: Admitted.

(Trial Exhibit 2023 received in evidence)

BY MR. LEACH:

Q. Let me draw your attention to Exhibit 994, Mr. Geall, the second quarter of 2010.

Is this the first earnings release after your departure of the company?

A. It was, yes.

Q. In or around July 22nd, 2010, were you aware that Autonomy had \$31 million in hardware revenue for the second quarter?

A. **No.**

Q. Would that be relevant to your assessment of the value of Autonomy's securities?

A. Yes, it would.

Q. Why?

A. Because Autonomy was viewed as a software business primarily that was delivering strong growth for -- with a high margin revenue stream. To have had that quantum of hardware in its revenues would have indicated a totally different type of

PROCEEDINGS

1 business and a totally different business model, which would
2 have had a very different valuation.

3 Q. Let me draw your attention to Exhibit 1186, the Q3/2010
4 press release.

5 On or around October 19th, 2010, were you aware that
6 Autonomy had in excess of \$25 million in hardware revenue?

7 A. No.

8 Q. Would that be relevant to your assessment of the value of
9 Autonomy's securities?

10 A. It would have been, yes.

11 Q. Why?

12 A. Because, again, it would have indicated that this wasn't a
13 pure software business, and that there was a much lower margin
14 revenue stream included in its -- in its P&L, and it would have
15 had a correspondingly low evaluation.

16 Q. Could we please display Exhibit 1531?

17 Is this the announcement of the results for the fourth
18 quarter of 2010, Mr. Geall?

19 A. It is, yes.

20 Q. At or around the time of this announcement, were you aware
21 that Autonomy had in excess of \$29 million in hardware revenue?

22 A. I was not.

23 Q. Would that be relevant to your assessment of the value of
24 Autonomy's securities?

25 A. It would.

PROCEEDINGS

1 **Q.** Why?

2 **A.** Because it would have impacted the valuation of the
3 business.

4 **Q.** If we could please display Exhibit 1788.

5 At or around the time of this press release, Mr. Geall,
6 were you aware that Autonomy had approximately 20 million in
7 hardware revenue?

8 **A.** I was not.

9 **Q.** Would that be relevant to your assessment of the value of
10 Autonomy's securities?

11 **A.** It would.

12 **Q.** Why?

13 **A.** Because it would have impacted the valuation of the
14 business.

15 **Q.** Please look at Exhibit -- if we could please display
16 Exhibit 2023.

17 At or around the time of this press release, were you
18 aware that Autonomy had approximately \$20 million in hardware
19 revenue for this quarter?

20 **A.** I was not.

21 **Q.** Would that be relevant to your assessment of the value of
22 Autonomy's securities?

23 **A.** It would.

24 **Q.** Why?

25 **A.** Because it would have impacted the valuation of the

1 business.

2 **MR. LEACH:** Thank you, Mr. Geall.

3 Thank you, Your Honor. I have nothing further.

4 **THE COURT:** Ladies and gentlemen, do you want to stand
5 up and stretch before we start the cross?

6 Okay, Ms. Little, you may proceed.

7 **MS. LITTLE:** Thank you, Your Honor.

8 CROSS-EXAMINATION

9 **BY MS. LITTLE:**

10 **Q.** Good afternoon.

11 **A.** Good afternoon.

12 **Q.** My name is Jan Little, and I represent Mr. Hussain. And
13 we've not met before, have we?

14 **A.** We have not.

15 **Q.** Mr. Geall, I'm going to start out asking you some
16 questions about MicroLink. Mr. Leach was asking you about
17 Exhibit 2772, which is in evidence.

18 If we could put that on the screen.

19 You recall this was the email where Mr. Moreland was
20 asking various questions about MicroLink.

21 **A.** Correct.

22 **Q.** And going up to the top of the email, Mr. Lynch, Dr. Lynch
23 responded with some answers to Mr. Moreland's questions;
24 correct?

25 **A.** He did, yes.

GEALL - CROSS / LITTLE

1 **Q.** And sometimes there are disagreements about why a purchase
2 was made or what the financial statements mean; correct?

3 **A.** Correct.

4 **Q.** And sometimes analysts are right and sometimes analysts
5 are wrong; correct?

6 **A.** Correct.

7 **Q.** And Mr. Lynch, Dr. Lynch here is responding that
8 Mr. Moreland is just wrong on this one; right? He completely
9 misses the point, item number 3 there, he completely misses the
10 cleared point on MicroLink?

11 **A.** Well, that's his argument there, yes.

12 **Q.** You have no knowledge about the commercial rationale for
13 the acquisition of MicroLink, do you?

14 **A.** Sorry?

15 **Q.** Do you have any knowledge of the commercial rationale for
16 the purchase of MicroLink?

17 **A.** Yes.

18 **Q.** What was it?

19 **A.** The rationale was that MicroLink was a federally cleared
20 business, which meant that it could sell to the U.S.
21 Government, and that they had employees that, you know, were
22 able to work on projects that employees of Autonomy would not
23 be able to work on, and therefore this would enable Autonomy to
24 sell more effectively into the U.S. Government.

25 **Q.** And that's what Dr. Lynch is referring to when he talks

1 about the cleared point; correct?

2 **A.** That is correct, yes.

3 **Q.** Because you need clearances to work in a secure facility
4 with classified information?

5 **A.** Absolutely.

6 **Q.** We can take that down.

7 Mr. Leach also asked you some questions with respect to
8 MicroLink about sell-in versus sell-through.

9 **A.** Uh-huh.

10 **Q.** Do you recall that line of questioning?

11 **A.** Yep.

12 **Q.** Are you familiar with the International Financial
13 Reporting Standards, IFRS?

14 **A.** I am, yes.

15 **Q.** What are they?

16 **A.** IFRS is the European standard for accounting.

17 **Q.** Are you familiar with the fact that under IFRS, as opposed
18 to the rules of the United States, revenue can be recognized at
19 sell-in? It doesn't have to be recognized at sell-through.

20 Are you familiar with that?

21 **A.** I am, yes.

22 **Q.** I also want to ask you about another email that Mr. Leach
23 asked you about relating to MicroLink.

24 This is Exhibit 2773 that's in evidence.

25 If we can put that on the screen.

GEALL - CROSS / LITTLE

1 And just to orient the jurors, up at the top, this was the
2 email where Dr. Lynch -- you sent it to Dr. Lynch, and
3 Mr. Hussain and Dr. Lynch responded: "Please check with dish."
4 You recall that email?

5 **A.** Yes.

6 **Q.** And let's go down further in the email to the second
7 page -- let me find it -- where it says -- up at the top,
8 these -- there were no -- I can't read it. There we go.

9 "There were no Q4 revenues from MicroLink."

10 Do you recall that?

11 **A.** I do.

12 **Q.** And those were your words; right?

13 **A.** That was my email commentary, yes.

14 **Q.** Okay. I want to show you an email that Mr. Leach didn't
15 show you, which is Exhibit 5832. That should be in the book in
16 front of you. Got it?

17 **A.** I've got it, yes.

18 **Q.** Is this an email that you sent to Steven Chamberlain?

19 **A.** It -- it appears so, yes.

20 **THE COURT:** Admitted.

21 (Trial Exhibit 5832 received in evidence)

22 **MS. LITTLE:** If we could put it up on the screen.

23 **Q.** Let's look at the bottom part first, the email from
24 Mr. Briest.

25 So this is the original email that came from Mr. Briest;

1 correct?

2 A. I believe so, yes.

3 Q. And at this point you had not yet drafted your proposed
4 responses to the questions; correct? They're not interlineated
5 in there like in Exhibit 2273; correct?

6 A. Not in this email; correct.

7 Q. Then if we go up to the top, again where you are sending
8 it to Mr. Chamberlain, the first person you sent Mr. Briest's
9 email to was Mr. Chamberlain -- right? -- not Dr. Lynch or
10 Mr. Hussain?

11 A. I don't remember.

12 Q. You can look at it. You don't have your interlineated
13 responses in this one; right?

14 A. But I don't know the timing of this email.

15 Q. Well, but you could look at it.

16 Do you see your proposed response in this one about "no Q4
17 revenues from MicroLink." It's not in there, is it?

18 A. No.

19 Q. So, in other words, you forwarded this to Mr. Chamberlain
20 before you drafted your proposed response?

21 A. Possibly, yes.

22 Q. Well, do you see your proposed response in there?

23 A. No.

24 Q. Okay. We can take that down.

25 And then, as we've seen, we had Exhibit 2773 where you do

1 have your proposed response -- let's bring that back up,
2 actually. 2773.

3 You have your proposed response on the second page in
4 blue: "There were no Q4 revenues for MicroLink;" correct?

5 **A.** Correct.

6 **Q.** Then if we go back up to the top, on the first page -- no.
7 At the top where Dr. Lynch responds. He corrects you; right?

8 He says, "Be sure he puts no more than 2 million revenue" -- he
9 says Q1, which I think is a mistake "MLink;" correct?

10 **A.** Why is it a mistake?

11 **Q.** Well, Q1, it was actually in Q4; right? Not Q1?

12 **MR. LEACH:** Objection. Assumes facts.

13 **MS. LITTLE:** Okay.

14 **THE COURT:** Well --

15 **MS. LITTLE:** He talks about a two million --

16 **THE COURT:** Is that a question?

17 **MS. LITTLE:** I'll withdraw it.

18 **Q.** Dr. Lynch responds with a reference to a 2M rev MLink;
19 correct?

20 **A.** Correct.

21 **Q.** That's a reference to two million revenue. MLink is
22 MicroLink; right?

23 **A.** Correct.

24 **Q.** So Dr. Lynch is telling you that there actually is revenue
25 for MicroLink, although he says Q1?

GEALL - CROSS / LITTLE

1 **A.** In Q1. He is referring to Q1, not Q4.

2 **Q.** Let's look at another email that Mr. Leach didn't show
3 you.

4 This is Exhibit 619. Do you find that in your book?

5 **A.** Yes, I've got it.

6 **Q.** And we don't have to put it all on the screen, but if you
7 just look at the second and third page, this, again, is
8 Mr. Briest's question and your proposed answers; correct?

9 **THE COURT:** I'm sorry. This is 619?

10 **MS. LITTLE:** 619. Oh, let me go back.

11 **Q.** Is this an email, sir, that you were a part of involving
12 Dr. Lynch, you, Sushovan Hussain, Peter Goodman?

13 **A.** It was, yes.

14 **THE COURT:** Admitted.

15 (Trial Exhibit 619 received in evidence)

16 **MS. LITTLE:** Thank you. I forgot, Your Honor, sorry.

17 **THE COURT:** It's just under a different title.

18 **BY MS. LITTLE:**

19 **Q.** So, again, going down to the bottom email from Mr. Briest,
20 this is the same one we've been talking about; right?

21 **A.** It is, yep.

22 **Q.** And then if you go up on the up to the next one, we've got
23 Dr. Lynch's response: "Please check with dish."

24 We are all familiar with that now; right?

25 **A.** Correct.

1 **Q.** And then if we go up to the very top of the email, we have
2 a response from Mr. Chamberlain; correct?

3 **A.** Correct.

4 **Q.** And Mr. Chamberlain writes "per MRL," that's Mike Lynch;
5 right?

6 **A.** Uh-huh.

7 **Q.** "Need to run MicroLink numbers through Sushovan. Small
8 deal in Q4 also went through them." Correct?

9 **A.** Correct.

10 **Q.** So now Mr. Chamberlain is also telling you that there was
11 a small deal, a \$2 million deal, I would submit, in Q4, also
12 went through them, meaning MicroLink; right?

13 **A.** Correct.

14 **Q.** So now you have two people telling you about this deal?

15 **A.** Actually, Steve Chamberlain here is asking whether
16 Autonomy or whether Sushovan is comfortable with no sales
17 statement regarding Q4.

18 **Q.** Because, in fact, there is a small deal in Q4; right?

19 **A.** Correct. That's what he's saying here.

20 **Q.** So nobody was hiding this MicroLink deal from you, were
21 they?

22 **A.** What -- I'm sorry. What MicroLink deal?

23 **Q.** The deal that we've been talking about, the Q4 MicroLink
24 deal. No one is hiding it from you, are they?

25 **A.** It's saying here that there is a small deal potentially in

1 Q4.

2 Q. No one is hiding it from you, are they?

3 A. Correct.

4 Q. Do you have trouble with my questions as opposed to
5 Mr. Leach's?

6 A. No.

7 Q. Mr. Geall, where were you on March 1st and March 2nd, 2010
8 when these emails were being exchanged?

9 A. I do not know.

10 Q. You testified on direct about a meeting with some
11 investment bankers in San Francisco.

12 A. Yes, correct.

13 **MR. LEACH:** Objection. Misstates the -- misstates the
14 evidence.

15 **BY MS. LITTLE:**

16 Q. Let me ask it this way.

17 Were you in San Francisco on March 1st attending the
18 Technology Media and Telecom Conference?

19 A. I was at the conference. I don't recall what day it was.

20 Q. Okay. Do you recall being at the Palace Hotel?

21 A. I do, yes.

22 Q. Let me show you -- if you would look in your book at
23 Exhibit 5831. This might help you. Do you have it there?

24 A. I do, yes.

25 Q. Is this an email from a Mr. Lucas at Morgan Stanley to you

1 and others, and then in turn you forward that to Stouffer Egan?

2 **A.** It is, yes.

3 **MS. LITTLE:** Move it in, Your Honor.

4 **THE COURT:** Admitted.

5 (Trial Exhibit 5831 received in evidence)

6 **MS. LITTLE:** Put that up on the screen.

7 **Q.** So looking at the bottom email from Mr. Lucas, who is
8 Mr. Lucas?

9 **A.** Christian Lucas was the European investment banker at
10 Morgan Stanley.

11 **Q.** He is writing to Mr. Cook and Mr. Hussain and you talking
12 about "getting together this afternoon;" correct?

13 **A.** Correct.

14 **Q.** "Since we are all in town in the same place, it would be
15 great if we could grab a drink."

16 And then you write back, up at the top "work for you at
17 5:30 p.m. at the Palace;" correct?

18 **A.** Correct.

19 **Q.** That's the Palace Hotel down on Market Street in
20 San Francisco?

21 **A.** Correct.

22 **Q.** Does this remind you now that you were in San Francisco?

23 **A.** Well, now I understand the dates, yes.

24 **Q.** So were you in San Francisco?

25 **A.** I was, yes.

1 Q. And how about Mr. Hussain, was he in San Francisco with
2 you?

3 A. He was, yes.

4 Q. Do you recall, sir, that on the morning of March 1st while
5 these emails were circulating, Mr. Hussain had to leave the
6 conference?

7 A. No.

8 Q. I'd like you to take a look at three exhibits: 5828,
9 5829, and 5830.

10 Why don't you take a look at all three of those, and I'm
11 going to ask you if those are all emails involving you that
12 were sent on March 1st.

13 A. (Witness reviews documents.)

14 Q. You can take them one at a time.

15 5830, is that an email that you sent to Christian Lucas on
16 March 1st?

17 A. Yes, it is.

18 Q. And 5831, is that an email that you sent to Stouffer Egan
19 on March 1st?

20 A. It is, yes.

21 Q. And 5830 -- I've got to go backwards.

22 5829, is that an email that you sent to Mr. Mehta on March
23 1st?

24 A. It is, yes.

25 Q. And 5828, is that an email that you sent to Stouffer Egan

1 on March 1st?

2 **A.** Sorry. 5828 or 5829?

3 **Q.** 5828.

4 **A.** 5828. It is, yes.

5 **MS. LITTLE:** I'd move 5828, 5829, and 5830 into
6 evidence.

7 **THE COURT:** Admitted.

8 (Trial Exhibits 5828-5830 received in evidence)

9 **BY MS. LITTLE:**

10 **Q.** Let's take 5830 and put it up on the screen.

11 Up at the very top, the email from you to Mr. Lucas, this
12 is at 10:30 in the morning; correct?

13 **A.** Correct.

14 **Q.** You say, "I might be around for dinner tonight. What were
15 your plans? Sushovan may now have to fly back to UK tonight,
16 so may not be able to meet with Frank."

17 Does that refresh your recollection about the fact that
18 Sushovan had to leave the conference?

19 **A.** It states that he may have to fly back to the UK, yes.

20 **Q.** Take a look at 5829. You write to Mr. Mehta: "Bad news,
21 I'm afraid. I will have to cancel today, as I was traveling
22 with my CFO" -- that's Mr. Hussain; correct?

23 **A.** Correct.

24 **Q.** "And he has unexpectedly had to fly back to the U.S."

25 Did you mean UK?

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1 **A.** I probably did, yes.

2 **Q.** "A family emergency." And then you talk about how you
3 have to host a customer meeting, etc. Correct?

4 **A.** Correct.

5 **Q.** And then 5828, your email to Mr. Egan. And you write, in
6 the second sentence:

7 "Now that Sushovan is heading back to UK, can you
8 attend this with me and then follow along with Frank Cook
9 for a drink at 5:30;" correct?

10 **A.** Correct.

11 **Q.** Do you recall what the family emergency was that sent
12 Mr. Hussain back to the UK?

13 **A.** I don't.

14 **Q.** You don't recall it at all?

15 Do you recall in this early 2010 period Mr. Hussain
16 having -- Mr. Hussain's father having health issues?

17 **A.** I do, yes.

18 **Q.** Tell us about that.

19 **A.** His father had health issues.

20 **Q.** Do you know --

21 **A.** I don't have more detail than that.

22 **Q.** You don't have more detail than that. Okay.

23 So getting back to Exhibit 2773 where we started, we don't
24 need to put it up on the screen, but you wrote the draft
25 response saying that there were no Q4 revenues; correct?

1 **A.** Uh-huh.

2 **Q.** And Dr. Lynch pointed out that you should check about a \$2
3 million deal; correct?

4 **A.** Correct.

5 **Q.** And Mr. Chamberlain said that there was a small MicroLink
6 deal; correct?

7 **A.** Correct.

8 **Q.** And Mr. Hussain didn't respond, because he was heading
9 back to London; right?

10 **A.** Okay.

11 **MR. LEACH:** Objection. Foundation.

12 **MS. LITTLE:** Do we have to go through it all again?

13 **Q.** Was he heading back to the UK that morning?

14 **THE COURT:** I don't know whether he responded or not.
15 Ask him did he respond, for whatever reason.

16 **BY MS. LITTLE:**

17 **Q.** Did Mr. Hussain respond, sir?

18 **A.** Mr. Hussain would likely have flown back on the evening
19 flight, because most flights out of the U.S. are in the
20 evening. So I could well have spoken to him in the morning. I
21 don't remember.

22 **Q.** We haven't seen any email where he responded, have we?

23 **A.** But we were together in San Francisco, so he could have
24 verbally responded.

25 **Q.** Oh, now you're saying he verbally responded. Is that your

1 testimony?

2 A. I'm saying I don't remember.

3 Q. Okay. He didn't respond to you, did he?

4 A. I don't remember.

5 Q. Mr. Geall, you spoke about Mike Mooney being the head of
6 sales; correct?

7 A. Correct.

8 Q. And Mr. Hussain would participate in sales calls?

9 A. Correct.

10 Q. And in your opinion that was unusual; correct?

11 A. Correct.

12 Q. Would you agree with me that it's important for a CFO to
13 understand where company revenue is coming from and how it's
14 going in a particular quarter?

15 A. Absolutely.

16 Q. And is it important for a CFO to understand the progress
17 of revenue, the pace of revenue, how it's coming in over the
18 quarter?

19 A. Yes, it would be.

20 Q. It's important for a CFO to know what to expect about the
21 company's ultimate performance for the quarter?

22 A. Absolutely.

23 Q. There is nothing wrong with that; right? The more
24 information the CFO has, the better he can do his job; correct?

25 A. Correct.

1 Q. And you respected Mr. Hussain; right?

2 A. I did, yes.

3 Q. You've described him as humble and tough; right?

4 A. Yes.

5 Q. He was a suitable office mate, I assume?

6 A. Yes.

7 Q. And you never questioned his aptitude as a CFO, did you?

8 A. No.

9 Q. And you've not identified a single instance in which
10 Mr. Hussain directed you to hide information or mislead the
11 market, have you?

12 A. Correct.

13 Q. And you also were a big believer in Autonomy, weren't you?

14 A. I was.

15 Q. You thought it was unique in the software space,
16 especially because it had a lower percentage of services
17 revenues; right?

18 A. Correct.

19 Q. And when you left Autonomy, you had nothing but good
20 things to say about the company; right?

21 A. I had no negative things to say initially, no.

22 Q. I'd like you to take a look in your binder at Exhibit 647.
23 Is this an email that you sent to Dr. Lynch --

24 THE COURT: 647?

25 MS. LITTLE: Yes.

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1 **THE COURT:** I'm looking at 647.

2 **MS. LITTLE:** 647.

3 **Q.** Is this an email that you sent to Dr. Lynch on March 29th
4 with an attached letter?

5 **A.** It is, yes.

6 **MS. LITTLE:** Move it in, Your Honor.

7 **THE COURT:** Admitted, 647.

8 (Trial Exhibit 647 received in evidence)

9 **BY MS. LITTLE:**

10 **Q.** Let's take a look at the email. You say to Dr. Lynch:

11 "As per discussion last week, apologies for the email
12 communication."

13 And then let's look at the attachment on the next page.

14 This is your letter of resignation to Dr. Lynch; correct?

15 **A.** Correct, yes.

16 **Q.** You write: "It is with some sadness that I am tendering
17 my resignation from Autonomy;" right?

18 **A.** Correct.

19 **Q.** In the second paragraph you say:

20 "I would like to personally thank you for the
21 opportunity and insights you have given me during my two
22 years at Autonomy. I have learned a great deal and
23 enjoyed my time interacting with employees, customers, and
24 investors. Autonomy is a unique business, with a highly
25 committed and talented management team and employees."

1 Those are your words; right?

2 A. They are, yes.

3 Q. And in the next paragraph you say:

4 "In my new role I would hope to continue to build the
5 relationship further, particularly with yourself and
6 Sushovan. And assuming a suitable break period, my
7 intention will be to initiate coverage later in 2010."

8 Those are your words, too?

9 A. Correct.

10 Q. And you didn't say anything in this letter about your
11 concerns about hardware or SPE or all these concerns that
12 you've been describing to the jury today?

13 A. No. This was a resignation letter.

14 Q. I'm sorry?

15 A. It was a resignation letter.

16 Q. It was a resignation letter. Isn't the time of your
17 resignation a pretty good time to bring up concerns?

18 A. To what effect?

19 Q. If you have great concerns, don't you want someone to look
20 into them, take care of them?

21 A. That's why I had a meeting with Rob Webb.

22 Q. We'll talk about that.

23 When you came on at Autonomy in May of 2008, you were --
24 you said you were the chief officer of Virage; right?

25 A. Correct.

Q. You've told the jury that you were not really happy about serving in the investor relations role; correct?

A. Correct.

Q. You moved from Virage to investor relations in October of 2009; right?

A. Correct.

Q. So the only quarters that you were involved in the reporting the financials for were the third quarter of 2009, the fourth quarter of 2009, and the first quarter of 2010; correct?

A. No, because I would have been asked for input ahead of that. So as soon I was at Autonomy, Mike would ask me for input for the quarterly results.

Q. You weren't working in investor relations then; right?

A. **No.**

Q. Okay. So any request for input would be informal, not part of your official job as chief officer of Virage?

A. Correct, yes.

Q. And although you have experience in reading financial statements, sir, you're not an accountant, are you?

A. Correct.

Q. You don't have any knowledge of how decisions on Autonomy accounting were made, do you?

A. Correct.

Q. You didn't attend any meetings with Autonomy's auditors,

1 did you?

2 A. Correct.

3 Q. Do you know who Autonomy's auditors were?

4 A. Yes.

5 Q. Deloitte; correct?

6 A. Yes.

7 Q. You didn't attend any meetings with the audit committee?

8 A. No.

9 Q. And you have no knowledge about how Deloitte or the audit
10 committee made decisions or what documents they reviewed;
11 correct?

12 A. Correct.

13 Q. And you haven't seen any of Deloitte's work papers, have
14 you?

15 A. Correct.

16 Q. You also didn't work in the sales organization, did you?

17 A. Correct.

18 Q. And you didn't work in the marketing department?

19 A. Correct.

20 Q. So the activities of the sales organization and the
21 marketing department, you had no visibility into that?

22 A. Well, there were a number of salespeople that shared the
23 same floor at Piccadilly, as did the marketing team.

24 Q. But you weren't looking over their shoulder, at what they
25 were doing, did you?

1 A. Well, we were in constant communication, and everyone was
2 talking, so, yes.

3 Q. How about the U.S. sales operation? You had no knowledge
4 of what was going on in the U.S. sales operation, did you?

5 A. I did have discussions with Nicole Egan, the CMO, yes.

6 Q. But they're in the U.S. and you're in London; right?

7 A. Correct.

8 Q. There was some questions about analyst call, Q and As that
9 you prepared. Do you recall those questions?

10 A. I do, yes.

11 Q. Those Q and As were done just internally within Autonomy
12 management; correct?

13 A. Correct -- well, and with Financial Dynamics, yes.

14 Q. But they weren't released to the public?

15 A. No.

16 Q. And they're done internally, but those actual questions
17 and answers may never see the light of day, may never be asked,
18 may never be answered; right?

19 A. Which ones? The ones in the preparation?

20 Q. In your preparation?

21 A. Correct.

22 Q. Those are just meant to be a brainstorming exercise for
23 management; correct?

24 A. Correct, yes.

25 Q. Okay. And do you recall that during the actual analyst

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1 meetings, Mr. Hussain would have his own handwritten notes that
2 he would use?

3 **A.** Correct, yes.

4 **Q.** And that's what he was using, not the script; right?

5 **A.** He used his handnotes, yes.

6 **Q.** Okay. You've talked about consensus numbers, and the
7 consensus number is an average of estimates that the analysts
8 come up with; correct?

9 **A.** Correct.

10 **Q.** And you testified on direct that as an investor relations
11 person, you can't dictate what the consensus numbers are;
12 right?

13 **A.** Correct.

14 **Q.** But it's part of your job to provide information to
15 analysts to help them come to the right conclusion. Those were
16 your words; right?

17 **A.** Correct.

18 **Q.** And as part of your job to tell the analysts if their
19 number seems too low, you tell them you think it's too low. If
20 their number is too high, you tell them you think it's too
21 high; right?

22 **A.** Before a certain period in the quarter, yes.

23 **Q.** You want them to come to the right conclusion; right?

24 **A.** Exactly, yes.

25 **Q.** And you've testified about an incident involving Dr. Lynch

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1 where Dr. Lynch was upset with you; right? Do you recall that
2 testimony?

3 **A.** Yes.

4 **Q.** And you'd been on vacation.

5 **A.** Correct.

6 **Q.** And Dr. Lynch was upset because you hadn't done your job
7 of talking to the analysts and making sure they came to the
8 right conclusion; correct?

9 **A.** Incorrect.

10 **Q.** You had been on vacation, and you hadn't been in
11 communication with analysts about the consensus numbers; right?

12 **A.** Because we were in closed period when you are not able to
13 talk to the financial markets and influence them.

14 **Q.** So you couldn't have spoken to them anyway?

15 **A.** No.

16 **Q.** Okay. And you told Mr. Hussain that you can't control the
17 consensus numbers, and he agreed with that; right?

18 **A.** Correct.

19 **THE COURT:** It may be useful to have the witness
20 explain what a closed period is.

21 **BY MS. LITTLE:**

22 **Q.** Why don't you explain it?

23 **A.** So the closed period is a period normally two to three
24 weeks before the end of the quarter where a management team --
25 a company's management team should not be in communication with

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1 the financial markets, whether it's investors or analysts, for
2 the risk of giving inside information or giving an indication
3 because they know how well the quarter has gone. So it's just
4 better not to talk to the investment community.

5 **Q.** Thank you.

6 And again, in this meeting, you spoke to Mr. Hussain
7 first, and he agreed with you that you can't control the
8 consensus numbers; right?

9 **A.** Correct.

10 **Q.** And in the meeting involving Dr. Lynch, Mr. Hussain was
11 quiet. That was just between you and had Dr. Lynch; correct?

12 **A.** Correct.

13 **Q.** Okay. Let's talk a different topic now. You've testified
14 about Frank Quattrone and Catalyst. Do you recall that
15 subject?

16 **A.** I do, yes.

17 **Q.** And we had Exhibit 247. Maybe we can just put that up on
18 the screen quickly to refresh your memory. This was an October
19 6th email from Mr. MacLeod at Catalyst.

20 If we go down, Jeff, to the -- there we go.

21 Mr. MacLeod is reaching out to Sushovan saying, "I don't
22 know if you recall, but we met when I was at Goldman," and he
23 talks about the fact that Mr. Quattrone would really like to
24 get together with people at Autonomy. Correct?

25 **A.** Correct.

1 **Q.** And that was a -- that outreach came from Catalyst to
2 Autonomy, not the other way around; right?
3 **A.** Correct, yes.

4 **Q.** So Catalyst was reaching out to Autonomy, not anyone at
5 Autonomy reaching out to Catalyst?

6 **A.** Correct.

7 **Q.** Okay. And that was in October of 2009.

8 I'd like you also to take a look at Exhibit 5802 in your
9 binder.

10 Is that an email from you to Dr. Lynch on April 2nd, 2009?

11 **A.** It is, correct.

12 **MR. DOOLEY:** Move it in.

13 **THE COURT:** 5802 admitted.

14 (Trial Exhibit 5802 received in evidence)

15 **BY MS. LITTLE:**

16 **Q.** So this is actually six months earlier -- right? -- in
17 April of 2009, and you write to Dr. Lynch:

18 "Frank Quattrone is over in London. He's very keen
19 to meet with you." Is that right?

20 **A.** Correct, yes.

21 **Q.** So, again, this is an approach from Mr. Quattrone to
22 Dr. Lynch, not the other way around?

23 **A.** Correct.

24 **Q.** And actually, let's go back, if you would, to -- I'm sorry
25 to make you flip back -- back to 247 for a minute.

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1 Up at the top, you write "they" -- that means Catalyst;
2 right? Mr. Quattrone? That is who you are referring to?

3 **A.** Correct.

4 **Q.** "They continue to want to act as our defense." And I
5 think you explained on direct that -- well, I don't want to put
6 words in your mouth. What did you mean by that?

7 **A.** I meant that they were keen to work on behalf of Autonomy,
8 and if there was an active or a hostile takeover bid for
9 Autonomy, would want to defend Autonomy in that bid.

10 **Q.** You talk about a hostile takeover. Explain to the jury
11 what that means.

12 **A.** So sometimes companies want to acquire another business
13 and do that in a hostile way. They don't have communications
14 with the management team. They basically put an offer onto the
15 table and then, you know, discussions may start. Often then
16 you want somebody to represent you that ensures that they get
17 the best price for the business.

18 **Q.** And the rules on takeovers are different in the UK than
19 they are in the U.S.; correct?

20 **A.** Correct.

21 **Q.** And in the U.S., there's something available called a
22 poison pill; right?

23 **A.** Correct.

24 **Q.** Can you explain to the jury what a poison pill is.

25 **A.** A poison pill is normally an equity structure that is

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1 basically put in place to make it unattractive for a company to
2 acquire another one, because it triggers basically the option
3 value of the shares, and it dilutes down, makes the business
4 much more expensive.

5 Q. So just to try to simplify that. In the U.S., if someone
6 tries to take over your company and you don't want to be taken
7 over, there is this poison pill that you can employ to stop the
8 company from taking you over; is that a fair --

9 A. Potentially. Not all companies would have a poison pill
10 in place, but, yes, the opportunity is there.

11 Q. That's a remedy that can be available at a U.S. company?

12 A. It can be, yes.

13 Q. And the UK does not have such a remedy; correct?

14 A. Correct, yes.

15 Q. So in the UK if someone is trying to take you over and you
16 don't want to be taken over, or you think the price is too low,
17 there is nothing you can do; correct?

18 A. Well, you would rely then on shareholders to make sure
19 that the appropriate price was ultimately gotten. The
20 shareholders would have to sell their shares, so it's down to
21 them whether they want to tender their shares or not tender
22 their shares.

23 Q. But one way to protect against that happening is to try to
24 elicit other interests from other bidders to try to get the
25 price up; right?

1 **A.** Correct, yes.

2 **Q.** And is that what you are talking about here where you are
3 talking about a company like Catalyst "acting as our defense,"
4 in other words, trying to stimulate interest of a number of
5 bidders?

6 **A.** No. In this specific -- this specific point is if I was
7 in Mike's shoes, I would rather have Catalyst acting for me
8 rather than acting for another business acquiring me.

9 **Q.** Okay. And it's your testimony that Mr. Quattrone was not
10 going to be helping with trying to elicit interest in a number
11 of bidders?

12 **A.** No.

13 **Q.** And you were gone from Autonomy by the time Catalyst was
14 doing its work; correct?

15 **A.** Correct, yes.

16 **Q.** Let's talk about hardware for a minute.

17 You've testified on direct that you learned in September
18 of 2009 about a contract that someone left on the printer that
19 indicated that there were hardware sales; correct?

20 **A.** Correct.

21 **Q.** And you've testified that that raised red flags and raised
22 grave concerns, and you thought it was too much coincidence, I
23 think was your testimony; correct?

24 **A.** Correct.

25 **Q.** Did you tell anybody at Autonomy about these concerns,

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1 these grave red flag concerns that you had in September 2009?

2 **A.** Later on I did, yes.

3 **Q.** Later on, and this is Mr. Webb; right?

4 **A.** Correct.

5 **Q.** But I'm talking about in September of 2009, did you tell
6 anybody about your concerns?

7 **A.** No.

8 **Q.** How about in Q4 of '09, did you tell anybody about your
9 concerns?

10 **A.** Which concerns? On Q3 or Q4?

11 **Q.** These concerns about hardware.

12 **A.** In Q4, it was a different discussion. It was a -- it was
13 a change in the business structure relating to these Arcpliance
14 sales and now a higher proportion of revenues, so this was now
15 a change in the business model.

16 **Q.** Did you tell anyone in Q4 of 2009 about this \$45 million
17 hardware contract that you were so concerned about?

18 **A.** In Q4, no.

19 **Q.** How about in Q1, did you tell anybody about it in Q1?

20 **A.** Other than discussion with Rob Webb.

21 **Q.** Okay. And by April of 2010, you had already tendered your
22 resignation; right?

23 **A.** Correct, yes.

24 **Q.** And when you were preparing for the analyst call in Q1 of
25 2010, you didn't tell anybody, other than Mr. Webb, that we'll

1 talk about, but you didn't tell Dr. Lynch, you didn't tell
2 Mr. Hussain, you didn't tell Mr. Kanter, you told none of them
3 about these concerns that were supposedly so distressing to
4 you?

5 **A.** No, I didn't.

6 **Q.** And do you know who Mike Sullivan is, sir?

7 **A.** I do, yes.

8 **Q.** And he's the Autonomy executive in charge of Autonomy's
9 hardware sales; correct?

10 **A.** No. He was in charge of Zantaz.

11 **Q.** And in that capacity, he worked on hardware sales;
12 correct?

13 **A.** No. Because Zantaz was a cloud-based business that was
14 selling capacity in a data center.

15 **Q.** So you have no knowledge of Mr. Sullivan's involvement
16 with hardware sales?

17 **A.** No.

18 **Q.** Okay. Are you aware that -- okay.

19 Are you aware that Autonomy made hardware sales to its
20 major software customers?

21 **A.** No.

22 **Q.** Are you aware that the hardware sales that were made were
23 known within Autonomy?

24 **A.** No.

25 **Q.** Are you aware of any analysis that was done by Deloitte,

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1 the auditors, about hardware sales?

2 **A.** No.

3 **Q.** Are you aware of any analysis that Deloitte did with
4 respect to the cost accounting for hardware sales?

5 **A.** No.

6 **Q.** Are you aware of any analysis that Deloitte did concerning
7 whether or not hardware sales needed to be disclosed as a
8 separate revenue line?

9 **A.** No.

10 **Q.** You've testified on direct about the purity model, you
11 called it, or the pure software model. I'd like you to take a
12 look at Exhibit 428, which is in evidence. It's in the -- I
13 think it's in your black book. Actually, it might not be in
14 your black book. Maybe we can put it up on the screen. It's
15 in evidence. I'm looking for page 11 of Exhibit 428.

16 And I'll point you to the place on the right-hand column
17 at the bottom called "financial model." And it says, "Autonomy
18 is one of the rare examples of a pure software model," and then
19 it goes on to explain -- right? -- "Many software companies
20 have a large percentage of revenue that stems from professional
21 services, because they have a lot of customization work on the
22 product," dah, dah, dah. "In contrast, Autonomy ships a
23 standard product that requires little tailoring with the
24 necessary implementation work carried out by approved
25 partners."

1 So the point of calling it "pure software" is to contrast
2 it with companies that do services work; correct?

3 **A.** The point of calling it a pure software model was that the
4 revenue contribution or the breakdown in revenues for the
5 business was primarily software.

6 **Q.** Right. And that's to contrast against businesses that
7 have more of a services component, which is a higher margin --
8 or lower margin business; right?

9 **A.** As I mentioned, yes. A normal software company would
10 probably have between 30 and 35 percent of its revenues as
11 services. Autonomy had less than 10.

12 **Q.** While you have that exhibit, let's also look at page 37 of
13 528.

14 Up at the top paragraph -- first of all, let's look down
15 at the bottom right and see who is signing off on this page 37.

16 Do you see that Richard Knights -- do you know who Richard
17 Knights is?

18 **A.** He was the partner in charge of the accounts.

19 **Q.** And that's Deloitte; right?

20 **A.** Correct.

21 **Q.** So this page 37 is Deloitte's sort of blessing of this
22 report; correct?

23 **A.** Correct, yes.

24 **MR. LEACH:** Objection. Argumentative, foundation.

25

1 BY MS. LITTLE:

2 Q. Approval --

3 MR. LEACH: Which portion of the report, Your Honor?

4 THE COURT: Okay. Could you lay a foundation for your
5 question?

6 BY MS. LITTLE:

7 Q. Does Deloitte review the numerical part, the back part, I
8 guess it is, of an annual report, and give their approval of
9 it?

10 A. It should do, yes.

11 Q. And is that what page 37 is?

12 A. Yes.

13 Q. And up at the top left-hand column, Mr. Knight writes:

14 "We have audited the financial statements of Autonomy
15 Corporation for the year ended 31 December 2009;" correct?

16 A. Correct.

17 Q. And then the statement goes on to approve what they have
18 audited.

19 And I would also want to point you to the last couple
20 sentences in the first paragraph, where they write:

21 "The financial reporting framework that has been
22 applied in their preparation is applicable law. The
23 International Financial Reporting Standards, IFRS."

24 And we talked about that a few minutes ago; right?

25 A. Correct.

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1 **Q.** So it's clear that the standards that apply to Autonomy
2 are IFRS, not a U.S. GAAP system; correct?
3

4 **A.** Correct, yes.
5

6 **Q.** And you testified about some statements that were in one
7 of the drafts about SOP 97-2.
8

9 Do you remember that testimony?
10

11 **A.** Correct.
12

13 **Q.** That's a U.S. standard; right?
14

15 **A.** Correct.
16

17 **Q.** Not a UK standard?
18

19 **A.** Correct.
20

21 **Q.** Okay. Let's talk about SPE.
22

23 We've seen evidence that the SPE launch was announced in
24 September of 2009; right?
25

26 **A.** Correct.
27

28 **Q.** And that launch was well received by the market, was it
29 not?
30

31 **A.** Correct, yes.
32

33 **Q.** If you would take a look in your binder at Exhibit 237.
34

35 Is Exhibit 237 an example of one of the responses of the
36 market to the launch of SPE?
37

38 **A.** It appears to be, yes.
39

40 **Q.** Is that the sort of thing you would have reviewed in your
41 role as head of investor relations?
42

43 **A.** Not necessarily. This is a journalist writing a piece of
44

1 journalist.

2 Q. Do you recall reviewing this?

3 A. No.

4 Q. Okay. We'll skip it.

5 You testified about a company called NCorp. Do you recall
6 that?

7 A. I do.

8 Q. That was a company that was set up, founded a while ago by
9 Dr. Lynch; correct?

10 A. Correct.

11 Q. And it was acquired by Autonomy in 2005?

12 A. Correct.

13 Q. And NCorp's technology was a precedent for what eventually
14 became SPE; correct?

15 A. Correct.

16 Q. And the NCorp technology was called IGEN; is that right?

17 A. Correct.

18 Q. And SPE was sometimes referred to within Autonomy as the
19 next generation of NCorp -- right? -- next gen of NCorp?

20 A. Don't know.

21 Q. Never heard that?

22 A. No.

23 Q. NCorp's technology and SPE were aimed at addressing the
24 same issue, were they not, what's called the zero hit issue?

25 A. Uh-huh, correct.

GEALL - CROSS / LITTLE

1 Q. What's the zero hit issue?

2 A. This is where you basically get a null return if you are
3 querying a database.

4 Q. So we've all had that experience where you ask a question
5 and it comes back no hits.

6 A. Correct.

7 Q. But there were significant advancements in what SPE could
8 do versus what NCorp's technology could do; right?

9 A. Absolutely.

10 Q. And for one thing, most significantly, NCorp could only
11 deal with data that you loaded into it, but SPE could work on
12 its own on a database; right? Or do you even know the
13 technology of these products?

14 A. Yes. So NCorp was a structured database, so it was
15 querying against a structured database, as I mentioned before,
16 where IDOL had always been querying against unstructured data.
17 So IDOL SPE was a set of functions within IDOL relating to
18 structured data.

19 Q. And SPE could work directly on a database rather than have
20 to have material loaded into it the way NCorp did; right?

21 A. Well, you could basically pull data in from different
22 repositories.

23 Q. Do you know whether -- I'm going to have to get a little
24 technical here -- but do you know whether SPE could accept
25 instructions in what is called SQL, structured query language?

1 **A.** Well, structured data tends to be a query using SQL, so,
2 yes.
3

4 **Q.** And are you aware that NCorp's technology could not accept
5 SQL instructions?
6

7 **A.** I wasn't, no.
8

9 **Q.** So there are things about the technology here that you
10 don't know; right?
11

12 **A.** I was not in development; correct.
13

14 **MS. LITTLE:** Is 270 in evidence? Did you admit 270?
15 I think you did. No? Okay.
16

17 **MR. LEACH:** I don't believe so, but no objection.
18

19 **MS. LITTLE:** Okay. I would like to move in Exhibit
20 270. There is no objection.
21

22 **THE COURT:** 270 admitted.
23

24 (Trial Exhibit 270 received in evidence)
25

26 **BY MS. LITTLE:**
27

28 **Q.** Mr. Geall, Exhibit 270 is another example of one of these
29 drafts in preparation for an analyst call; correct?
30

31 **A.** Correct.
32

33 **Q.** If you take a look at page 13, down at the bottom
34 right-hand column, these are some of these sample questions and
35 answers that you prepare; right?
36

37 **A.** Correct.
38

39 **Q.** And you prepare these -- right? -- you or Mr. Goodman?
40

41 **A.** Some of these were taken from prior quarters, so these
42

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1 were prepared by a number of people within Autonomy and
2 Financial Dynamics.

3 **Q.** Okay. And you'll see the question number 100: "What
4 about NCorp?"

5 **A.** Sorry. Which question?

6 **Q.** So it's on page question 100: "What about NCorp?" And
7 it's is written:

8 "NCorp was five years ahead of its time. The concept
9 is similar, but the application has benefited from five
10 years of further R&D in IDOL;" correct?

11 **A.** That's what it states, yes.

12 **Q.** And that's in this document that you were putting together
13 and proposing as a draft Q and A; correct?

14 **A.** Correct.

15 **Q.** And then in the question before, number 99, you write:
16 "IDOL SPE uses a far superior probabilistic
17 approach;" correct?

18 **A.** Correct, yeah.

19 **Q.** So you were prepared to discuss NCorp with analysts;
20 right?

21 **A.** Correct.

22 **Q.** It was no secret?

23 **A.** Correct.

24 **Q.** It didn't take detective work on Google to find out about
25 it, did it?

GEALL - CROSS / LITTLE

1 A. Well, it did, because this was being positioned as a new
2 product and the second biggest product in the launch of
3 Autonomy's history, so it was seen as a big thing.

4 And as I mentioned, my concern was the use cases that were
5 being utilized were exactly the same as they were from five
6 years prior.

7 Q. NCorp was known within Autonomy, it was discussed within
8 Autonomy, it was going to be discussed with analysts. It was
9 not a secret, was it?

10 A. NCorp, no. It wasn't a secret.

11 Q. And the move into structured data was a project that was
12 in the works for a while; correct?

13 A. I do not know.

14 Q. Are you familiar with project X?

15 A. Yes.

16 Q. What's project X?

17 A. Project X was the code name Mike used when talking to
18 investors about a product that was going to be launched that
19 became IDOL SPE.

20 Q. And project X is something that was being discussed all
21 the way back in as early as 2008; correct?

22 A. I don't believe as far back as 2008, but certainly one or
23 two quarters before Q3/2009.

24 Q. Take a look in your binder, if you would, at Exhibit 5803.
25 5803 is an email from Charles Lytle to you and others?

1 A. Correct.

2 MS. LITTLE: I will move it in, Your Honor.

3 THE COURT: Admitted.

4 (Trial Exhibit 5803 received in evidence)

5 BY MS. LITTLE:

6 Q. Who is Charles Lytle?

7 A. Charles Lytle was the corporate broker at Citigroup.

8 Q. Is that your former boss?

9 A. No.

10 Q. But you worked with him at Citi?

11 A. I worked with him at Citi, yes.

12 Q. Okay. In this email, Mr. Lytle writes to Dr. Lynch,
13 Mr. Hussain, you and others. And if we go down to the bottom
14 to the section that says, "Richard Green" -- well, first of
15 all, what does this document represent, called road show
16 feedback. What is this document?

17 A. So Citigroup would have organized a road show for
18 Autonomy, a meeting with a number of investors. So the
19 investors are here: Phil Pierson at GLG, Ed Meyer at
20 Schroders.

21 The common practice after a roadshow is for the corporate
22 brokering team at the investment bank to phone around those
23 investors and get feedback on how the meeting was, any
24 questions they had, any concerns.

25 Q. So this is kind of a summary of what was discussed among

PROCEEDINGS.

1 the analysts; right?

2 **A.** Exactly.

3 **Q.** And if we go down to Richard Green, who is Richard Green
4 towards the bottom?

5 **A.** Richard Green is a fund manager.

6 **Q.** And in the middle there you see Richard Green's question
7 is:

8 "I'm wondering what the next story is. OEM seems to
9 be fizzling out. Perhaps it is Open V or Project X."

10 Do you see that?

11 **A.** Yes.

12 **Q.** Do you want to correct your testimony about whether
13 project X was being discussed in 2008?

14 **A.** Okay. Yes.

15 **Q.** Let's take a look at Exhibit 289, which is in evidence.

16 **THE COURT:** Is this an appropriate time to take a
17 recess?

18 **MS. LITTLE:** Sure.

19 **THE COURT:** Okay. Ladies and gentlemen, we are going
20 to take our recess for the day. Remember the admonition given
21 to you: Don't discuss the case, allow anyone to discuss it
22 with you, form or express any opinions.

23 See you at 9:00 tomorrow morning. Thank you.

24 (Proceedings were heard out of presence of the jury:)

25 **THE COURT:** Let the record reflect the jurors have

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1 left.

2 Ms. Little, about how much longer do you have?

3 **MS. LITTLE:** I will take a look tonight. Let me just
4 take a quick look here. I'd say half hour.

5 **THE COURT:** Okay. All right. Thank you very much.

6 I don't have -- you have from time to time given me
7 exhibit lists from time to time.

8 **MS. LITTLE:** What we are doing with --

9 **THE COURT:** Right now we're out of time.

10 **MS. LITTLE:** My understanding is that with
11 cross-examination exhibits, since they're coming in sort of on
12 the fly, is that each morning or evening our paralegal,
13 Ms. Bringola, is sending things to Ms. Scott.

14 **THE COURT:** Oh, okay. Well, make sure I get a copy,
15 so I can -- I mean, I write them down as numbers, just because
16 that's what I'm supposed to do. But that's fine. That's fine.
17 Just as long as we don't get into some situation where nobody
18 knows if something is admitted or thinks it's admitted and it's
19 not been admitted, that sort of thing.

20 **MR. KEKER:** I've got them all in my head, Your Honor.

21 **THE COURT:** Yeah, exactly. That's where they belong.

22 **MR. KEKER:** Just check with me.

23 **THE COURT:** Okay. Well, we'll do that. Or maybe you
24 would like to go into the jury room during the course of
25 deliberations in the event they have a question as to whether

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1 or not Exhibit -- what?

2 **MR. KEKER:** I said I will be available.

3 **THE COURT:** You will be available for that. Okay.

4 All right.

5 **MS. LITTLE:** I think you expressed earlier the
6 cross-examination brings the unexpected, and so we're just
7 trying to be in line with that.

8 **THE COURT:** No. I mean, that's fine. I'm not being
9 critical. I'm just trying to get a handle.

10 Yes, Mr. Leach.

11 **MR. LEACH:** Thank you, Your Honor.

12 I was paying close attention to the estimate of the
13 remaining cross-examination, because Mr. Geall has come a long
14 way to be here with us. He has a commitment tomorrow afternoon
15 in the South Bay, and I would just ask --

16 **THE COURT:** Let's try to wrap him up. That may depend
17 on you, Mr. Leach, as much as Ms. Little.

18 **MR. LEACH:** I am very incentivized, Your Honor.

19 **THE COURT:** Let's try to wrap him up tomorrow morning,
20 if we can. If we can.

21 **MS. LITTLE:** I will take a harsh look tonight and see
22 what I can cut. Thank you.

23 **MR. LEACH:** Thank you, Your Honor.

24 (Proceedings adjourned at 4:01 p.m.)

25

PROCEEDINGS.

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3 **CERTIFICATE OF REPORTER**

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.
6

7 DATE: Tuesday, March 6, 2018
8

9 *Pamela A. Batalo*

10 Pamela A. Batalo, CSR No. 3593, RMR, FCRR
11 U.S. Court Reporter
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